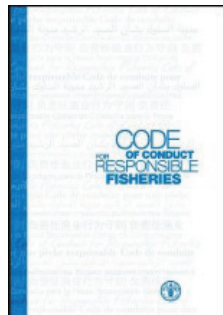
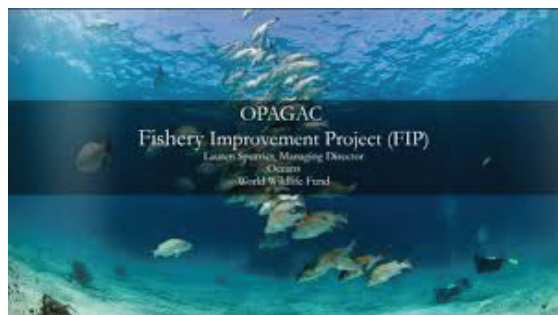
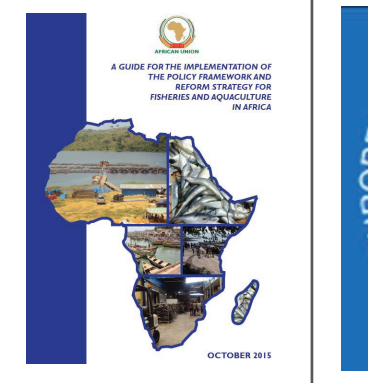
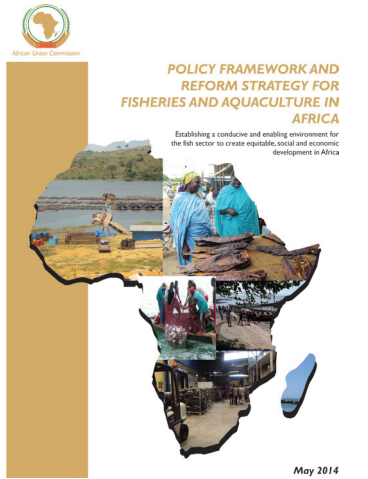
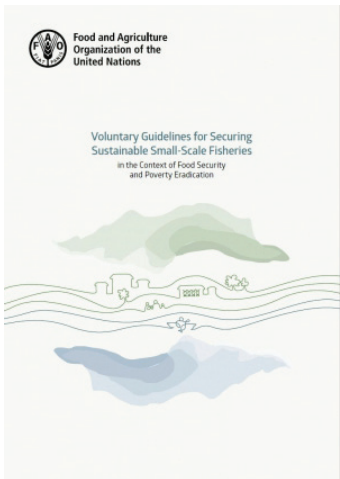




# IMPLEMENTATION OF INTERNATIONAL FISHERIES INSTRUMENTS IN AFRICA - A CASE STUDY FOR EAST AFRICA



<b>Binding</b>	UNCLOS	<b>Non-binding</b>	UNGA Resolutions
	UNFSA		Code of Conduct
	Compliance Agreement		IPOAs
	Port State Measures Agreement		Guidelines on Flag State Performance
	CBD		Deep-sea Guidelines
	CITES		Bycatch Guidelines



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**Disclaimer:** The views and opinions expressed in this article are those of the authors and do not necessarily reflect the official policy or position of the African Union Interafrican Bureau for Animal Resources.

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## ACRONYMS AND ABBREVIATIONS

ABN J	Areas Beyond National Jurisdiction
AU	African Union
AU-IBAR	African Union - InterAfrican-Bureau for Animal Resources
AU-MS	African Union Member States
AUEA MS	African Union East African Member States
CBD	Convention on Biological Diversity
CITES	Convention on International Trade in Endangered Species of Wild Fauna & Flora
CLCS	Commission on the Limits of the Continental Shelf
CMS	Convention on Migratory Species
COL	Consortium for Ocean Leadership (includes marine research institutions)
COS	Center for Oceans Solutions (incl. professional marine training institution)
CSI	Cetacean Society International
DESA	Department of Economic and Social Affairs (of the UN)
DOALOS	Division for Ocean Affairs and the Law of the Sea
DSCC	Deep Sea Conservation Coalition
DWF	Distant-water fleets
EEZ	Exclusive Economic Zones
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
GEF	Global Environment Facility
GESAMP	Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection
GOBI	Global Ocean Biodiversity Initiative
GOF	Global Ocean Forum Greenpeace
HLPF	High-Level Political Forum on Sustainable Development (UN)
ICES	International Council for the Exploration of the Sea
ICRI	International Coral Reef Initiative
ICSF	International Collective in Support of Fish workers
ICSU	International Council for Science
IGAD	Intergovernmental Authority on Development (IGAD) in Eastern Africa
IMBER	Integrated Marine Biogeochemistry and Ecosystem Research
IMO	International Maritime Organization
IOC	Intergovernmental Oceanographic Commission (of UNESCO)
IOC AFRICA	IOC Sub-Commission for Africa and the Adjacent Island States
IOI	International Ocean Institute (for the protection of the oceans)
IPSO	International Programme on the State of the Ocean
ISA	International Seabed Authority
ISCU/SCOR	Scientific Committee on Oceanic Research of the International Council For Science
IUCN	International Union for Conservation of Nature and Natural Resources
IWC	International Whaling Commission
MBI	Monaco Blue Initiative (NGO promoting marine protected areas)
KMNR	Kisite Mpunguti National Reserve
WMNR	Watamu Marine National Reserve
MEA	Multilateral Environmental Agreement
OCEANA	NGO for the conservation of marine biodiversity
OCR	Ocean Conservation Research (NGO for reduction of ocean noise pollution)

PFRS	Policy Framework and Reform Strategy for fisheries and aquaculture in Africa
PSMA	Port State Measures Agreement (requirements on prior notification of port entry, use, restrictions on entry , landing/trans-shipment of fish, etc to combat IUU etc)
RFMOs	Regional Fisheries Management Organizations
RFMOs	Regional Fisheries Management Organizations
RSP	Regional Seas Programmes
SOI	Sustainable Ocean Initiative
UN	United Nations
UNCLOS	United Nations Law of the Sea (UNCLOS, 1982)
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
UN-OHRLLS	UN Office of the High Representative for the Least Developed Countries, Landlocked
Developing	Countries and Small Island Developing States
WSSD	World Summit for Sustainable Development, 2002
WOC	World Ocean Council
WWF	World Wide Fund for nature conservation

## EXECUTIVE SUMMARY

One of the stated purposes of the Policy Framework and Reform Strategy for Fisheries and Aquaculture in Africa (PFRS) is to facilitate ratification and /or adoption of appropriate provisions in international fisheries management instruments. The intention is to assist AU Member States, RECs and RFBs to develop realistic fisheries and aquaculture policies by suggesting standards and best practices to the sector's benefits to AU member states, in terms of food security, employment and income.

The fisheries sectors of most developing countries and especially the Western Indian Ocean countries of the African Union remain a major livelihood support in terms of nutrition/food security, livelihoods, employment, foreign exchange earner, and conservation and biodiversity values of global significance. These fisheries consist of both capture fisheries and aquaculture. The fisheries resources management and aquaculture development in the African Union Member States (AU-MS) are guided by national policy and legal instruments. These instruments are mainly developed to regulate fishing and farming practices in national waters and territories. They also set acceptable standards for marketing, trade and utilization of fisheries and aquaculture products. However, the inadequacies of these instruments have become evident in the emergency of new realities that are inherent in contemporary fisheries management and aquaculture development challenges. To address these issues, the AU-IBAR initiated surveys to "Assess the constraints to the Implementation /Adoption of International Instruments for Fisheries Management & Aquaculture Development" in order to identify areas of intervention to support the African Union Member States (AU-MS). The overall objectives of the survey were to assess the level of awareness and status of implementation of relevant international instruments; Identify the challenges in the ratification and implementation of these instruments; Identify relevant provisions in these instruments that would strengthen regional approach to sustainable management and development of fisheries and aquaculture in Africa; Diagnosis of challenges, constraints and possible solutions including framework of national and regional Plans of Action (POAs) to adopt key international instruments, and Domestication of the international instruments by AU-MS in line with the African fisheries reform strategy.

The international instruments emanate from a global response to the declining fisheries stocks globally, as well as the degradation of fisheries habitats. This response is in the form of an elaboration and adoption of four (4) classes of instruments; i) Globally binding fisheries treaties adopted to address the conservation and management of fish stocks, ii) International voluntary instruments adopted to promote a framework of principles and standards for responsible fisheries, iii) Regional institutional frameworks for the management of tuna and tuna-like species, iv) Global environmental treaties adopted, although negotiated outside the international instruments, to provide useful tools and principles towards sustainable fisheries management.

However, the fisheries and aquaculture resources continue to face numerous threats mainly emanating from ineffective governance due to still-born National Fisheries Legislation combined with poorly conceived and rarely implemented policies lacking national, regional and global coordination. Despite the ratification and incorporation of the various international fisheries instruments, into the National Fisheries Legislation, the international and national instruments have received very low level of execution. Consequently, high levels of biological and economic overexploitation in many fisheries are evident, from small-scale fisheries to semi industrial ventures such as the shallow water bottom trawl shrimp fisheries to the industrial seine and long line fisheries off the Indian Ocean waters. This has had a negative impact on the fish stocks and economies of AU Member States, as well as on vital food supplies and jobs.

Majority of the AU-MS in Eastern Africa are signatories to various international legal instruments; and especially key legislations such as the UNCLOS (1982), the UN Fish Stocks Agreement (UNFSA, 1995) and FAO Compliance Agreement (1993). However, the ratification of many of the other fisheries and aquaculture specific instruments remains low despite the fact that many of the governments are aware of the content of such initiatives. Some countries have ignored recent instruments such as the provisions of International Plans of Action related to managing fishing capacity, IUU fishing, shark management and seabird by-catch in long line fisheries. Consequently, such instruments or the related legislations are clearly lacking in the national legislation. The implementation of the international fisheries legislation can however, learn from feasible coordination implementation, such as the Lake Victoria Environmental Coordination Project, the water catchment and wide basin resource management, and the Integrated Coastal Zone Management initiatives. These cases reflect some commonalities; trans-boundary, strengthening of institutional and legislative structures, and increased financial funding to the initiatives. Therefore, the management of the Indian Ocean fisheries and especially the tuna fisheries under the IOTC can borrow from the regional initiatives which have shown success, in order to tackle the increasing fishing intensity and especially the current global problem of illegal, unreported and unregulated (IUU) fishing. However, the aquaculture sector, has received limited legislation, with many of the international legislations being soft-law instruments meant to give guidance to the growth of the sub-sector. The main focus has only been on fast growing sub-sectors such as the intensive fish culture, shrimp culture, cage culture, and genetic modification of aquaculture species among others. The main international instruments, and which majority of the AU-MS for EA region have signed, include the Kyoto Declaration on Aquaculture (1976), Agenda 21 and the UN Conference on Environment and Development (UNCED, 1992), FAO Code of Conduct for Responsible fisheries (FAO CCRF, 1995) and the Bangkok Declaration and Strategy (Aquaculture Development beyond 2000), and the FAO consultation on good management practices and institutional and legal arrangements for sustainable shrimp culture (2002). Both Sudan and Southern Sudan have remained non-parties to the UNCLOS 1982 Law. However, Eritrea which has an extended coastline of over 1200km has also remained a Non-party to the Convention.

The main challenges identified in accession/ratification and execution of the international fisheries ranged from poor design and implementation of the institutional and legal frameworks, inadequate financing of the activities associated with the implementation of the international instruments. Furthermore, the technical requirements associated with these instruments, the need for development of the human resources, and the role of both the regional and international fisheries bodies cannot be ignored in the efforts to ensure successful implementation of the national instruments. Interestingly, some countries have also signed some extended instruments e.g. despite being landlocked, Rwanda, Burundi and Ethiopia are Signatories to the UNCLOS (1982) Convention which might be of little relevance (if any) to the fisheries legislations of landlocked countries in AU-MS. This latter scenario also presents a huge challenge in efforts to incorporate these instruments into the national fisheries legislations, not to mention the challenges in getting these countries to ratify the apparently non-relevant instruments.

The diverse nature of the AU-MS in terms of social, economic, cultural aspects, strengths in organizational structures, the variations in the national and local fisheries instruments, diversity of the fisheries (ranging from traditional to industrial), varied approach to fisheries management and, the structures and legislation of each member country cannot be ignored. Furthermore, the regional challenges, especially related to expansive nature of the EEZ the huge presence of unmonitored DWFNs in some of the countries, the emerging IUU fisheries in the region makes the control, management and protection of the rich EEZ resources an uphill task. Evidently, the difficult to control and management the EEZ calls for the strengthening of the regional Monitoring, Control and Surveillance (MCS) which requires stronger intervention by the



Regional Fisheries Bodies (RFBs). These bodies must play their role of global linkage and provision of a framework for the management of key fisheries of the EEZ of the AU-MS of the WIO region including the straddling and highly migratory Tuna fish stocks among others.



## 1.0. INTRODUCTION

One of the stated purposes of the Policy Framework and Reform Strategy for Fisheries and Aquaculture in Africa (PFRS) is to facilitate ratification and /or adoption of appropriate provisions in international fisheries management instruments. The intention is to assist AU Member States, RECs and RFBs to develop realistic fisheries and aquaculture policies by suggesting standards and best practices to the sector's benefits to AU member states, in terms of food security, employment and income.

Fisheries resources management and aquaculture development in the African Union Member States (AU-MS) are guided by national policy and legal instruments. These instruments are mainly developed to regulate fishing and farming practices in national waters and territories. They also set acceptable standards for marketing, trade and utilization of fisheries and aquaculture products. Though these instruments put in place measures that helped regulate the fisheries, their inadequacies became glaring with the emergency of new realities that are inherent in contemporary fisheries management and aquaculture development challenges.

In response to the directive of the PFRS, that “any reforms must also assist Member States to meet their obligations under national and international fisheries, aquaculture and natural resource management instruments” a framework to create a clear national approach that will facilitate the adoption of international instruments relevant to fisheries and aquaculture by AU-MS in the Eastern African Region is suggested. Background information on some key international instruments that could serve to refresh the memories of intended targets as they move forward with the process is also provided.

### 1.1 Context and Rationale

One of the expected outcomes from the implementation of the PFRS is to ensure that international fisheries issues at regional levels are coherent and harmonized. One of the strategic approaches is to entrench awareness of important international instruments for sustainable fisheries management and frameworks that identify the need for their domestication in realizing sustainable fisheries management

The binding status of some of these instruments (e.g. UNCLOS<sup>1</sup>, UNFSA<sup>2</sup> and FAO-PSMA<sup>3</sup>) makes it imperative for creating awareness amongst the AU member states. They are also potentially useful for sustainable management of fisheries in the Exclusive Economic Zones (EEZ) as well as “Areas Beyond National Jurisdiction” (ABNJ) even for the non-binding instruments such as the FAO Code of Conduct for Responsible Fisheries (FAO-CCRF, 1995), the “Voluntary Guidelines for Flag State Performance” to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing, Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries (SSF) among others. Furthermore, some of the instruments incorporate provisions for various types of “Assistance” to developing countries; hence the RFMOs could also provide some measures of benefits to member countries.

Political commitment to resolve inherent challenges requires long-term national, regional, and international efforts to build awareness and consensus for effective international regulations to make fisheries resources rationally, equitably and sustainably accessible to more than one country. Increased awareness and subsequent accession to international treaties, conventions and agreements would greatly assist Africa to address illegal fishing, limit the abuse of flags of convenience and help enforce international management measures that will ensure sustainable and profitable exploitation of fisheries resources in the region. This

<sup>1</sup> UNCLOS – United National Law of the Sea, 1982

<sup>2</sup> UNFSA – United Nations Fish Stocks Agreement

<sup>3</sup> FAO-PSMA – FAO Port State Measures

consultancy work will provide information for establishment of institutions, values and practices that will safeguard the future of fish resources and the health and livelihood of communities that depend on these resources for their income, nutrition and quality of life.

## **1.2 Organization of the paper**

This document looks at the national policy and legal instruments that guide fisheries resource management and aquaculture development in the African Union Member States (AU-MS) focusing on the domestic landscape, structure and actors

## **1.3 Domestic Landscape, Structure and Actors**

In majority of the African Union Member states in Eastern Africa, international instruments including conventions, laws, regulations and agreements require legislation before they can have the force of law. The processes for the legislation and implementation of the instruments are often through integration into the legal framework through parliament, using various approaches, the commonest being the textual incorporation of the provisions of the international instruments into the actual wording of the various Acts or into schedules and the incorporation of the content of the instrument obligations into the existing legislative documents using terminology and concepts specific to the domestic law or Acts.

After implementation of the international obligations by the AU-MS governments through the various approaches, the obligations are then subject to interpretation by various domestic courts just like any other law within the AU-MS. In these interpretations, then the principles of complementarity with the existing domestic laws, as well taking the contexts of the international instruments into account and the legislations are presumed to comply with the AU-MS international obligations.

## **1.4 Methodology**

### **1.4.1 Scope and Schedule**

This study was implemented within the Eastern Africa<sup>4</sup> region (Figure 1) during January-April, 2016 with link-up consultations during the study period, as guided by the AU-IBAR office. The study involved but not limited to the following:-

1. Expanse of the area covered (country or fisheries extend especially in the case of trans-boundary resources) and stakeholder engagement and interaction,
2. Administrative structure, communication channels with member states stakeholders (including the fishers and State Departments of Fisheries officials among others).
3. Identification of Focus Groups/areas and Key Informants within the member states. The assignment comprised mainly a desktop analysis with inclusion of one consultative meeting held in February, 2016 in Maputo Mozambique during the capacity building workshop on Fisheries Access Agreement for the East and southern Africa.

The main logistical aspects of the engagement are summarized in the Annex 1 and the Analysis approach in Annex 2, which includes the tools employed in the consultation and collection of data. The study focused on the following key instruments, in addition to other national, country to country, and regional agreements/instruments:-

- a. The United Nations Convention on the Law of the Sea (UNCLOS),
- b. The U.N. Fish Stocks Agreement (UNFSA),
- c. The FAO Compliance Agreement,
- d. Non-fisheries agreements and conventions:-

<sup>4</sup> Eastern Africa Region: Djibouti, Eritrea, Ethiopia, Kenya, South Sudan, Sudan, Uganda, Rwanda, UR of Tanzania, Madagascar, Mauritius, Seychelles, Comoros, Somalia

- i. Convention on Biological Diversity (CBD)
- ii. Convention on International Trade in Endangered Species (CITES),
- iii. Conventions on Pollution,
- iv. Safety at sea, and other relevant matters
- e. Non-binding instruments such as the FAO Code of Conduct for Responsible Fisheries (CCFR)
- f. Port States Measures and International Plan of Action (IPOA) for combating Illegal Unreported and Unregulated (IUU) fishing,
- g. European Union IUU regulations (EU-IUU Regulations, 2010)
- h. Voluntary guidelines for SSF and flag state measures
- i. Regional declarations and resolutions



**Figure 1:** A map of Africa Showing the regions of the African Union, and the area of focus for this study; Eastern Africa region (East).

## **1.4.2 Field Survey and Data Collection Approach**

### **1.4.2.1 Focus Group Discussions (FGDs)**

The study employed mainly a desktop approach and only a brief FGDs and feedback from a group of the participants attending the training “Workshop on Fair and sustainable fishery access agreements in fisheries” was conducted in Maputo Mozambique during February, 2016. The data collection tool in Annex-I was used to:-

- i. Ascertain the number of stakeholders and institutions involved in the design, adoption and implementation of the fisheries instruments,
- ii. their impact on stakeholders & stakeholder interest in specific Instruments,
- iii. Stakeholder influence on implementation of instrument and available stakeholder resources during the implementation.

#### ***1.4.2.2 Key Informant Interviews (KIIs)***

Three countries were selected for the KIIs; Eritrea, Seychelles and Kenya. The exercise was conducted via emailed questionnaires to the country directors of the State Departments of Fisheries for the three countries.

## **2.0. GENERALITIES ON KEY INTERNATIONAL INSTRUMENTS**

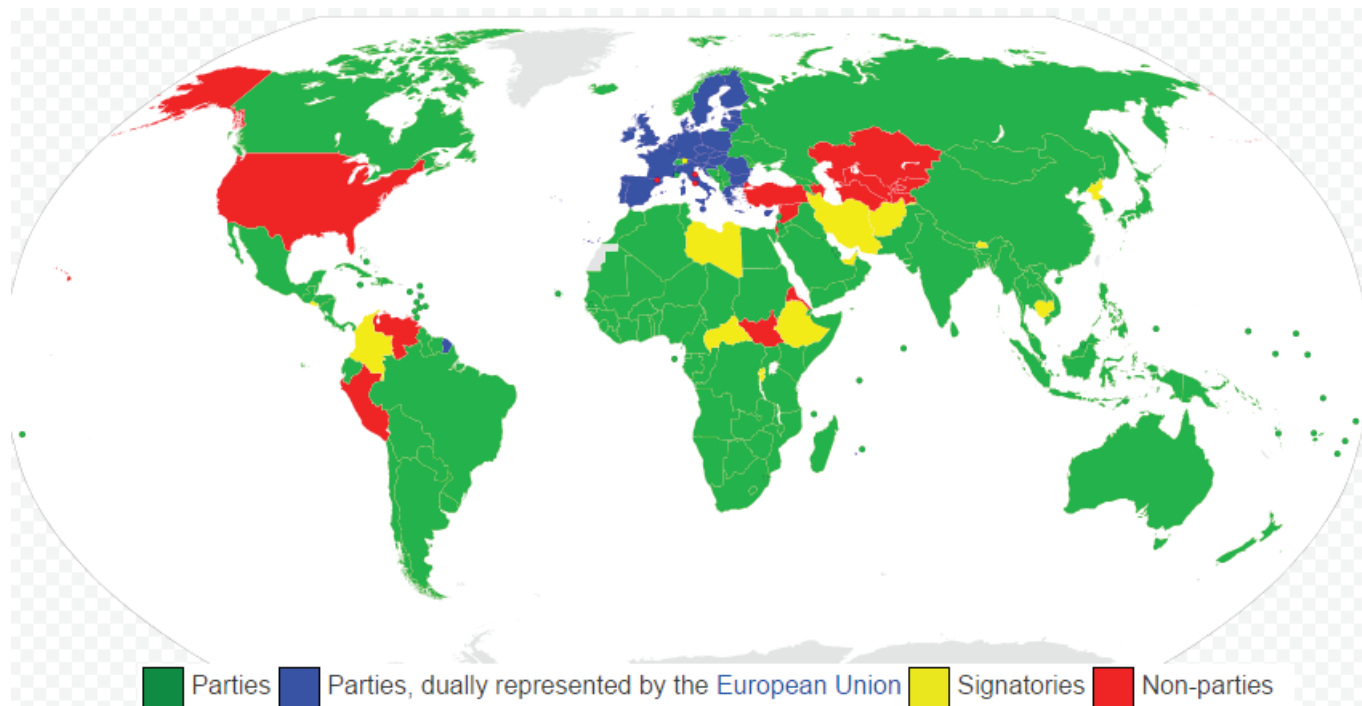
### **2.1 Evolution of international Instruments**

Humankind has exploited the sea for centuries, and for thousands of years, the sea was simply a source of food and was only of interest to people to that extent. Furthermore, the great majority of ocean fishing has traditionally been restricted to the couple of hundred nautical miles offshore, not because of technological limitations, but due to the fact that marine life is concentrated in the near-shore areas. Consequently, even during the heyday of the “free-seas” (*mare liberum*), distant-water fleets (DWF) capable of harvesting the marine resources throughout the world ocean regions, fishing by both foreign and local fishers was most active in near-shore waters often resulting in numerous conflicts in resource partitioning. The situation was further augmented by global politics and rise of the great seafaring nations including the Netherlands, Portugal and Spain in the 15th Century which changed the game, with many nations increasingly seeking to expand their spheres of influence at sea.

Consequently, the increasing interests and expanding influences at sea brought with it a lot of challenges and of key were the increasing conflicts between the differing interests of coastal states and distant water fishing nations. The need to bring order into the sea and define clear ways to determine boundaries and expanse of the waters a nation could exploit saw the evolution of the international legislations and laws. The coastal states pressed for increasing jurisdiction and control over key fishing grounds, while the DWFN sought to rely on the traditional rules protecting the freedom of the high seas. The first expression of these competing views at a global level was witnessed at the 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas. The enlarged breadth of the Territorial Sea and the compromises leading to the Exclusive Economic Zone in the context of the Third United Nations Conference on the Law of the Sea were also the outcome of a similar pattern of confrontational attitudes between the Coastal States and the DWFN.

Further, there has been a proliferation of such instruments in recent decades. Table I shows a few of the more important examples and types of international fisheries instruments. The most important of the international instruments is the United Nations Convention on the Law of the Sea (UNCLOS, 1982), which entered into force in 1994 setting out the legal context for all subsequent international arrangements and agreements relating to the use of the oceans and seas. Directly arising from UNCLOS is the “UN Fish Stocks Agreement and the FAO Compliance Agreement (UNFSA, 1995)” which designed to strengthen the provisions of the UNCLOS 1982 in relation to the high seas fisheries and trans-boundary stocks. Subsequently, a host of other global agreements, both binding and voluntary evolved including the Convention for International Trade in Endangered Species of Fauna and Flora (CITES) and the Convention on Biological Diversity (CDB) among others.

Further, several regional bodies involved in utilization, management and conservation of marine living resources have also evolved over the years including the various tuna commissions e.g. Convention on Indian Ocean Tuna (IOTC), various FAO regional fishery bodies (RFBs) such as the South Indian Ocean Fisheries Agreement (SIOFA), the South West Indian Ocean Fisheries Commission (SWIOFC) which promotes the application of the provisions of the FAO Code of Conduct on Responsible Fisheries, including the precautionary approach and the ecosystem approach to fisheries management, and many others.



**Figure 2:** Parties to the United Nations Convention on the Law of the Sea (UNCLOS, 1982)  
(Source: International Court of Justice)

**Table 1:** Some key legislation and agreements which make up the legal regime of fisheries management

Law / Agreement	Comment	Signatory / Accession / Ratification Status	Status of Implementation / Execution by Eastern AU-MS
<b>A. Legislation directly linked to fisheries</b>			
1. Primary legislation on fisheries	<ul style="list-style-type: none"> <li>National Fisheries Acts in African Union Member States</li> </ul>	All AU-MS with Acts, Bills, Ordinances	11 AU-MS with Acts; Burundi, Ethiopia, Sudan/Southern Sudan Acts developing
2. Secondary legislations on specific fisheries & control measures (linked to National legislations)	<ul style="list-style-type: none"> <li>Include regulations and, where appropriate, traditional customs and practices as part of the provisions of the National Fisheries Acts</li> <li>Guide on issues requiring continuous revisions and redress e.g. fishing effort management, adoption of articles of international conventions e.g. CITES, CBD into National Fisheries Acts etc.</li> </ul>	All AU-MS	All the AU-MS have legislations/ ordinances/ regulations, proclamations, bills with continuous revisions in the existing laws
3. United Nations Convention on the Law of the Sea of 10th Dec., 1982 (UNCLOS, 1982)	<ul style="list-style-type: none"> <li>Entered into force on 16th November 1994. - Comprehensive regime of law and order in the world's oceans and seas</li> <li>Establishes rules governing all uses of the oceans and their resources; All problems of ocean space are closely interrelated; need to be addressed wholly.</li> </ul>	-All Eastern Coastal Africa AU MS are parties (signatory to both Convention and Agreement)	Rwanda /Burundi signatory to Convention only; Eritrea, Sudan and Southern Sudan are non signatories



Law / Agreement	Comment	Signatory /Accession / Ratification Status	Status of Implementation / Execution by Eastern AU-MS
4. UN Fish Stocks Agreement (UNFSA, 1995)	<ul style="list-style-type: none"> <li>Agreement for implementation of Provisions of UNCLOS (1982) on Conservation &amp; Management of Straddling and Highly Migratory Fish Stocks; -ratification received on 11th Nov., 2001;- elaborates UNCLOS principle for state cooperation to ensure conservation &amp; promote optimum utilization of fisheries resources within and beyond EEZ; strengthened RFBs incl. IOTC</li> </ul>	All Eastern Coastal Africa AU MS [except Djibouti, Eritrea, Madagascar, Somalia & UR Tanzania]	Three (3) AU-MS [Kenya, Mauritius, Seychelles] have incorporated the Agreement into their National Legislations to varied extend
5. FAO Code of Conduct for Responsible fisheries (FAO-CCRF, 1995)	<ul style="list-style-type: none"> <li>Established by the FAO international Conference on Responsible Fishing, 1992.</li> <li>Includes the principles of Monitoring control and surveillance to support sustainable fisheries that culminated in the FAO-CCRF</li> </ul>	Endorsed by majority of Eastern Africa AU MS	Low execution; some EA-MS Including Kenya, Tanzania, Seychelles etc. have regulations on deleterious fishing etc.
6. FAO Compliance Agreement on Conservation and Management Measures by Fishing Vessels on High Seas (1993)	<ul style="list-style-type: none"> <li>Management measures by fishing vessels on the high seas</li> <li>Addresses problems associated with reflagging of fishing vessels to avoid compliance with applicable conservation and management rules for fishing activities on the high seas.</li> </ul>	6 Eastern Africa AU MS are parties to Agreement	Non parties: Eritrea, Somalia, other landlocked; - Rwanda and Burundi have also signed the
7. Cancún initiative and declaration of like-minded megadiverse countries, 2002	<ul style="list-style-type: none"> <li>follows the FAO Declaration of the International Conference on Responsible Fishing (1992) that established the principles of Monitoring control and surveillance</li> </ul>	Only Kenya and Madagascar ratified	Other Eastern bloc AU-MS status of adoption not clear.
<b>B. Non-fisheries agreements and conventions:-</b>			
1. Convention on Biological Diversity (CBD, 1993)	<ul style="list-style-type: none"> <li>Binding agreement</li> <li>Parties to the Convention are obliged to implement its provisions.</li> <li>Main goals: conservation of biodiversity; sustainable use of the components of biodiversity; and sharing the benefits arising from utilization of genetic resources in a fair and equitable way.</li> </ul>	All Eastern Africa AU-MS	Ratified incl. Eritrea; inclusion of various articles in national legislation on fisheries, wildlife, forestry

Law / Agreement	Comment	Signatory /Accession / Ratification Status	Status of Implementation / Execution by Eastern AU-MS
2. Convention on International Trade in Endangered Species (CITES, 1975)	<ul style="list-style-type: none"> <li>• Aim is to ensure that international trade in specimens of wild animals and plants does not threaten their survival</li> <li>• Voluntarily but legally binding on the Parties; they have to implement the Convention but it does not take the place of national laws</li> <li>• Provides a framework for Parties to adopt domestic legislation to ensure that CITES is implemented at the national level.</li> </ul>	All Eastern Africa AU-MS	Ratified incl. Eritrea; inclusion of various articles in national legislation on fisheries, wildlife, forestry
3. International Convention on Pollution from ships (MARPOL 73/78)	<ul style="list-style-type: none"> <li>• 1973 protocol modified by the Protocol of 1978.</li> <li>• One of the most important international marine environmental conventions.</li> <li>• Developed by IMO to minimize pollution of the oceans and seas, including dumping, oil and air pollution; into force on 2nd Oct, 1983</li> </ul>	Djibouti, Kenya, Sudan, UR Tanzania, Madagascar, Mauritius, Seychelles	Some degree of enactment into national legislations by Kenya, UR Tanzania, Mauritius and Seychelles
4. International Convention for the Safety of Life at Sea (SOLAS, 1974)	<ul style="list-style-type: none"> <li>• International maritime treaty requiring Signatory flag states to ensure that ships flagged by them comply with minimum safety standards in construction, equipment and operation; SOLAS 1974 came into force on 25th May 1980; regarded as the most important of all international treaties concerning safety of merchant ships</li> </ul>	ALL Eastern Africa AU-MS (except Somalia, Rwanda, Uganda, South Sudan)	Status of implementation challenged by the small-scale nature of the fisheries; e.g. majority vessels used are not seaworthy
5. RIO Declaration on Environment & Development (Agenda 21 of the UN)	<ul style="list-style-type: none"> <li>• Protection of the oceans, all kinds of seas</li> <li>• Includes enclosed and semi-enclosed seas, and coastal areas</li> <li>• Protection, rational use and development of their living resources</li> </ul>	ALL EA AU_MS except Eritrea, South Sudan and Somalia	Fair implementation in Kenya, Uganda, Tanzania; status in Somalia, Djibouti and Eritrea not clear.
6. Kyoto Declaration on the Global Environment, 1997	<ul style="list-style-type: none"> <li>• known as the Kyoto Protocol to the United Nations Framework Convention on Climate Change; adopted in order to curb emission of such gasses.</li> </ul>	All Eastern AU-MS are parties without binding targets	In national legislation but poor/no implementation due to non-binding targets

Law / Agreement	Comment	Signatory /Accession / Ratification Status	Status of Implementation / Execution by Eastern AU-MS
7. Lima Call for Climate Action, 2014	<ul style="list-style-type: none"> <li>gave new urgency towards fast tracking adaptation and building resilience across the developing world—not least by strengthening the link to finance and the development of national adaptation plans.</li> </ul>	All Eastern AU-MS signed	Poor/No implementation into national legislation
<b>C. Non-binding instruments or Voluntary Agreements pertaining to fisheries</b>			
1. FAO Code of Conduct for Responsible Fisheries (CCFR, 1995)	<ul style="list-style-type: none"> <li>-Adopted by 28th Session of FAO Conference on 31st October 1995.</li> <li>-Sets out principles/international standards of behaviour for responsible practices to ensure effective conservation, management &amp; development of living aquatic resources (Ecosystem and biodiversity).</li> </ul>	All Eastern Africa AU-MS	All signed including Eritrea, well reflected in the national instruments for Kenya, Mauritius UR Tanzania, Uganda and Seychelles
2. Port State Measures and International Plan of Action (IPOA) for: i). IUU fishing, ii). Fishing Capacity iii). Seabirds iv). Sharks v). International Whaling Commission (IWC)	<ul style="list-style-type: none"> <li>Voluntary instruments elaborated within the framework of the Code of Conduct for Responsible Fisheries.</li> <li>apply to all States and entities and to all fishers.</li> <li>The 22nd session of the Committee on Fisheries (COFI) 1997/1998 organized expert consultation for Guidelines leading to a IPOA for --controlling illegal, unregulated and unreported fishing (IUU), reduction in incidental catch of birds (albatrosses and petrels) in of tuna, swordfish and billfish etc. in long-line fisheries, Conservation and Management of Sharks (IPOA-SHARKS); Consultation on Management of Fishing Capacity, Shark Fisheries and Incidental Catch of Seabirds in Long line Fisheries</li> <li>the IPOA-IUU lays clear guidelines on the key aspect of monitoring control and surveillance in the EEZ waters of each AU-MS</li> </ul>	All Eastern Africa AU-MS as signatories	Fairly implemented in Kenya, UR Tanzania, Seychelles, Mauritius; Poorly in Somalia, Djibouti, Eritrea, Madagascar

Law / Agreement	Comment	Signatory /Accession / Ratification Status	Status of Implementation / Execution by Eastern AU-MS
3. European Union IUU regulations (EU-IUU Regulations, 2010)	<ul style="list-style-type: none"> <li>to prevent, deter and eliminate illegal, unreported and unregulated fishing (IUU); Commission work actively with all stakeholders to ensure coherent application of the IUU Regulation;</li> <li>only marine fisheries products validated as legal by competent flag state or exporting state can be imported to or exported from the EU.</li> </ul>	[Wide endorsement] Requirement for All MS with EU FPAs	Some MS (incl. Kenya, Tanzania, Uganda, Seychelles fairly compliant; Kenya and Tanzania on process of certification of select fisheries
4. Voluntary guidelines for SSF and flag state measures	prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing through the effective; implementation of flag State responsibilities	Endorsed by All AU-MS in FAO-COFI 2014	Poor implementation, non binding clause an huddle
5. Fisheries (FA) and Fisheries Access Agreements (FAA) Under The Lomé Convention	<ul style="list-style-type: none"> <li>Originally, aimed to be the framework for genuine development cooperation between the Old Continent and its former colonies.</li> <li>However, from the 80's, neo-liberalism and priority given to the market economy overrode the research effort and support deployed in favor the "lesser developed countries";</li> <li>Accords do not contribute to any real development of ACP countries' fisheries; they are commercial, rather than development agreements.</li> </ul>	Varied FA/FAAs between EU, China, Japan, Korea & other developed nations with the AU-MS	Periodic renewals and lack of regionally negotiated agreements are hindering the working of the RFBs; e.g. varied timings between EU FAAs a big challenge to Tuna management
6. Bilateral Fishing Partnership Agreements (FPA) for EU fleets Tuna fishing in the SWIO	<ul style="list-style-type: none"> <li>Offer fishing opportunities for the European fishing fleet in the EEZ of Madagascar, Mozambique, Comoros, Seychelles and Mauritius.</li> <li>Most of the catches of the EU fleet (esp. purse seiners), supply the local canning industries based in Mauritius, Seychelles, Madagascar &amp; Kenya</li> </ul>	Varied All Eastern Africa AU-MS	Differential lapse of these FPAs among the different MS a big challenge to the regional management of the stocks

Law / Agreement	Comment	Signatory /Accession / Ratification Status	Status of Implementation / Execution by Eastern AU-MS
<b>D. Legislation directly linked to Aquaculture / Mari-culture</b>			
1. The Rome Consensus on World Fisheries; FAO 1995	<ul style="list-style-type: none"> <li>Recommendations relevant to aquaculture and provided guidance on the role of the sector in respect of food security in developing countries</li> <li>eliminate overfishing, rebuild and enhance fish stocks, minimize wasteful fisheries practices, develop sustainable aquaculture, rehabilitate fish habitats, and develop fisheries for new and alternate species based on principles of scientific sustainability and responsible management</li> </ul>	All Eastern Africa AU-MS signed except Rwanda and South Sudan	Five (5) EA AU-MS incl. Kenya, UT Tanzania, Seychelles, Mauritius and Uganda have clauses in the National legislation, but implementation poor
2. International Plant Protection Convention (IPPC)	<ul style="list-style-type: none"> <li>to protect cultivated and wild plants by preventing the introduction and spread of pests</li> </ul>	All Eastern Africa AU-MS	AU-MS have clauses in the National legislation, but implementation lacking
3. Food Aid Convention (FAC), 1980	<ul style="list-style-type: none"> <li>Multilateral cooperation instruments.</li> </ul>	All Eastern Africa AU-MS	In the National legislation, but implementation lacking
4. Codex Alimentarius (Food Code), 1963	<ul style="list-style-type: none"> <li>established by FAO and the World Health Organization to develop harmonized international food standards,</li> <li>protect consumer health and promote fair practices in food trade</li> </ul>	All Eastern Africa AU-MS (*Southern Sudan)	Seven (7) National legislation of AU-MS, fair implementation
5. Convention on Biological Diversity	<ul style="list-style-type: none"> <li>Binding agreement</li> <li>Parties to the Convention are obliged to implement its provisions.</li> <li>Main goals: conservation of biodiversity</li> </ul>	All Eastern Africa AU-MS	In the National legislation, with fair implementation
6. FAO Code of Conduct for Responsible Fisheries (CCFR, 1995)	<ul style="list-style-type: none"> <li>Adopted by 28th Session of FAO Conference on 31st October 1995.</li> <li>Sets out principles/international standards of behaviour for responsible practices to ensure effective conservation, management &amp; development of living aquatic resources (Ecosystem and biodiversity).</li> </ul>	All Eastern Africa AU-MS	In the National legislation, with fair implementation; young states e.g. Southern Sudan pending

Law / Agreement	Comment	Signatory /Accession / Ratification Status	Status of Implementation / Execution by Eastern AU-MS
7. Kyoto Declaration on Aquaculture, 1976	<ul style="list-style-type: none"> <li>• First major international Conference on Aquaculture to chart the way for aquaculture development and address issues facing the industry.</li> <li>• organized by FAO in Kyoto, Japan in 1976.</li> <li>• Most important precursor to UNCED in aquaculture, focusing on technology and science, networking, training, institutional development</li> </ul>		Poor implementation; young states e.g. Southern Sudan pending adoptions
8. Bangkok Declaration and Strategy 2000	<ul style="list-style-type: none"> <li>• Conference on Aquaculture in the 3rd Millennium, Bangkok, Thailand.</li> <li>• Organized by the Network of Aquaculture Centres in Asia-Pacific (NACA) and FAO; Deliberated on aquaculture development beyond 2000 in terms of environmental sustainability etc.</li> <li>• Themes centre on sustainable aquaculture development; policy-making and planning; technological and R&amp;D; human resource development; international trade; product quality, safety and marketing; regional/inter-regional cooperation; financing; and institutional support etc.</li> </ul>		Poor implementation, some states incl. Southern Sudan pending
9. Johannesburg Declaration on Sustainable Development, 2002	<ul style="list-style-type: none"> <li>• adopted at the World Summit on Sustainable Development (WSSD), also known as the Earth Summit 2002 calling for Plan of Implementation</li> <li>• Builds on earlier declarations made at the UN Conference on the Human Environment (Stockholm, 1972), Earth Summit (Rio de Janeiro in 1992); Commits nations to sustainable development</li> </ul>		Lacking in National legislation, with poor implementation; some states e.g. Southern Sudan pending

## **2.2 Classification of key instruments for fisheries and aquaculture development**

The international instruments emanate from a global response to the declining fisheries stocks globally, as well as the degradation of fisheries habitats. This response is in the form of an elaboration and adoption of four (4) classes of instruments; i) Globally binding fisheries treaties adopted to address the conservation and management of fish stocks, ii) International voluntary instruments adopted to promote a framework of principles and standards for responsible fisheries, iii) Regional institutional frameworks for the management of tuna and tuna-like species, iv) Global environmental treaties adopted, although negotiated outside the international instruments, to provide useful tools and principles towards sustainable fisheries management.

National legislations on fisheries and aquaculture, as well as in other sectors of the environment and economy vary substantially from one country to the next due to various factors including the legal systems in the country (common law, civil law and others). However, the primary fisheries legislations follow broad approaches, prescribing the principles and policy relating to fisheries and are usually approved by the Legislature of that country, which may be the National Congress or Parliament. In many cases, these legislations also specify details on the implementation of aspects of the policy considered to be particularly important or sensitive with due reference to establishing fishery management plans and the procedures for the planning process (FAO). The primary legislation is usually described in a Fisheries Act or similar legislation. Consequently, control measures such as limitations of fishing effort in a given fishery, the annual total allowable catch (TAC) or issues on licenses, gear restrictions, seasonal closures and closed areas, and input and output controls which require frequent, typically annual, revision, are usually gazetted from time to time as second-tier laws, or subsidiary legislation (regulations, orders, proclamations etc.) under the powers of the minister or director in charge of the fisheries resource management institution.

In many of the AU-MS Eastern Africa, the international instruments for fisheries management are poorly understood. Surprising, many of the National fisheries instruments which comprise the National Fisheries Acts, Proclamations, and Ordinances etc. have enshrined numerous articles from the International Fisheries Instruments. However, a set of additional legislations are also used in the management of fisheries resources including management of breeding and nursery grounds, important ecosystems including bird areas (IBAs), nesting grounds (rockeries) for sea turtles, and fragile corals ecosystems among others

## **2.3. Main concepts in instruments relevant to fisheries and aquaculture policy in the Region**

The United Nations Conference on Environment and Development (UNCED), also known as the “Earth Summit, Rio de Janeiro” (1992) marked the new beginning for the international instruments, with shift from international legislations on environment and economic issues to legislations and instruments on sustainable development (Boyle and Freestone, 1999). For example, with regards to marine capture fisheries, Chapter 17 of Agenda 21 calls on states “to pursue the protection and sustainable development of the marine and coastal environment and its resources” in accordance UNCLOS, 1982 Convention. Further, a two-tiered approach to deal with the problems of over-fishing was also adopted including i) negotiation of international agreements on specific marine fish stocks and high seas fishing, and ii) Development of instruments for the conservation and management of fisheries including the Code of Conduct for Responsible Fisheries (Code of Conduct) and the Codex Alimentaris (Food Code, 1963). Further, the Agenda 21 was also instrumental in pushing for the IPOA on various issues including whaling, shark fisheries, straddling fish stocks and highly migratory fish stocks, IUU and incidental catch of birds shifting the agenda from law on resource governance to laws enhancing sustainable resource use and management.

Further, FAO and the international community have continued to support the development and production of the non-legal technical guidelines to advice and support the implementation of the responsible fisheries

(FAO-CCRF, 1995). The guidelines focus on fishing operations; vessel monitoring systems; the precautionary approach to capture fisheries and species introduction; the integration of fisheries into coastal area management; fisheries management; conservation and management of sharks; aquaculture development; good aquaculture feed manufacturing practice; inland fisheries; responsible fish utilization; and indicators for sustainable development of marine capture fisheries.

The Code of Conduct was followed by four (4) International Plans of Action (IPOAs) developed under the auspices of FAO: the International Plan of Action for Reducing Incidental Catch of Seabirds in Long line Fisheries (IPOA-Seabirds), the International Plan of Action for the Conservation and Management of Sharks (IPOA-Sharks), the International Plan of Action for the Management of Fishing Capacity (IPOA-Capacity) and the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU). Other important international fisheries instruments are the Rome Consensus on World Fisheries, the Rome Declaration on the Implementation of the Code of Conduct for Responsible Fisheries (FAO-CCRF) and the Kyoto Declaration and Plan of Action. The development of these IPOA and progressions to various declarations and amendments shows a clear evolution of the global efforts in promoting responsible fisheries. Consequently, the AU-MS of Eastern Africa must adapt to the changing global climate in the management of fisheries and aquaculture with continuous revisions/amendments of the National Legal Instruments within the AU-MS.

Most of the national legislations and regulations on fisheries and aquaculture greatly adapt to, and are shaped by the international instruments. For example, the international fisheries instruments have impetus for practical implementation of the concepts of sustainable development and the precautionary principle or precautionary approach in the field of fisheries. In feedback, states have also acted to give effect to specific provisions of international fisheries instruments, such as the Compliance Agreement and the UN-Fish Stocks Agreement (UNFSA, 1995) which seek to enhance responsible fishing or conservation and sustainable use of living marine resources. Furthermore, the “hard law” and “soft law” instruments adopted in recent years influence and reinforce one another. For example, the preambles of the most agreements refer to Agenda 21 and to the issues identified in the Cancún Declarations. The term “Responsible fishing” from the Code of Conduct for Responsible Fisheries (FAO-CCRF, 1995) has been frequently adopted in the Cancún declarations, using the FAO-CCRF soft law instruments e.g. to call on states to become parties to fisheries agreements and to implement them. Such links between the international hard and soft fisheries instruments have provided a basis for use of the soft law instruments to guide the interpretation of the various hard law instruments in fisheries and aquaculture.

On the other hand, aquaculture is one of the fastest-growing food production systems globally, with developing countries in the lead. The industry has been viewed as a remedial support to the reduction of over-exploitation of the fisheries and aquatic resources in both tropical and sub-tropical regions. Like the fisheries sector legislation, majority of the national legislation on aquaculture has been influenced by international instruments and developments. The major international instruments important to aquaculture include the Kyoto Declaration on Aquaculture, the Bangkok Declaration and the FAO-CCRF (1995). The Kyoto and Bangkok declarations focus on development of aquaculture towards achieving its full potential and based on policies and regulations that promote practical and economically viable farming and management practices that are environmentally responsible and socially acceptable. Consequently, all the aquaculture guiding legislative instruments at the national level should be transparent while taking place within relevant national policies, regional and international agreements, treaties and conventions.

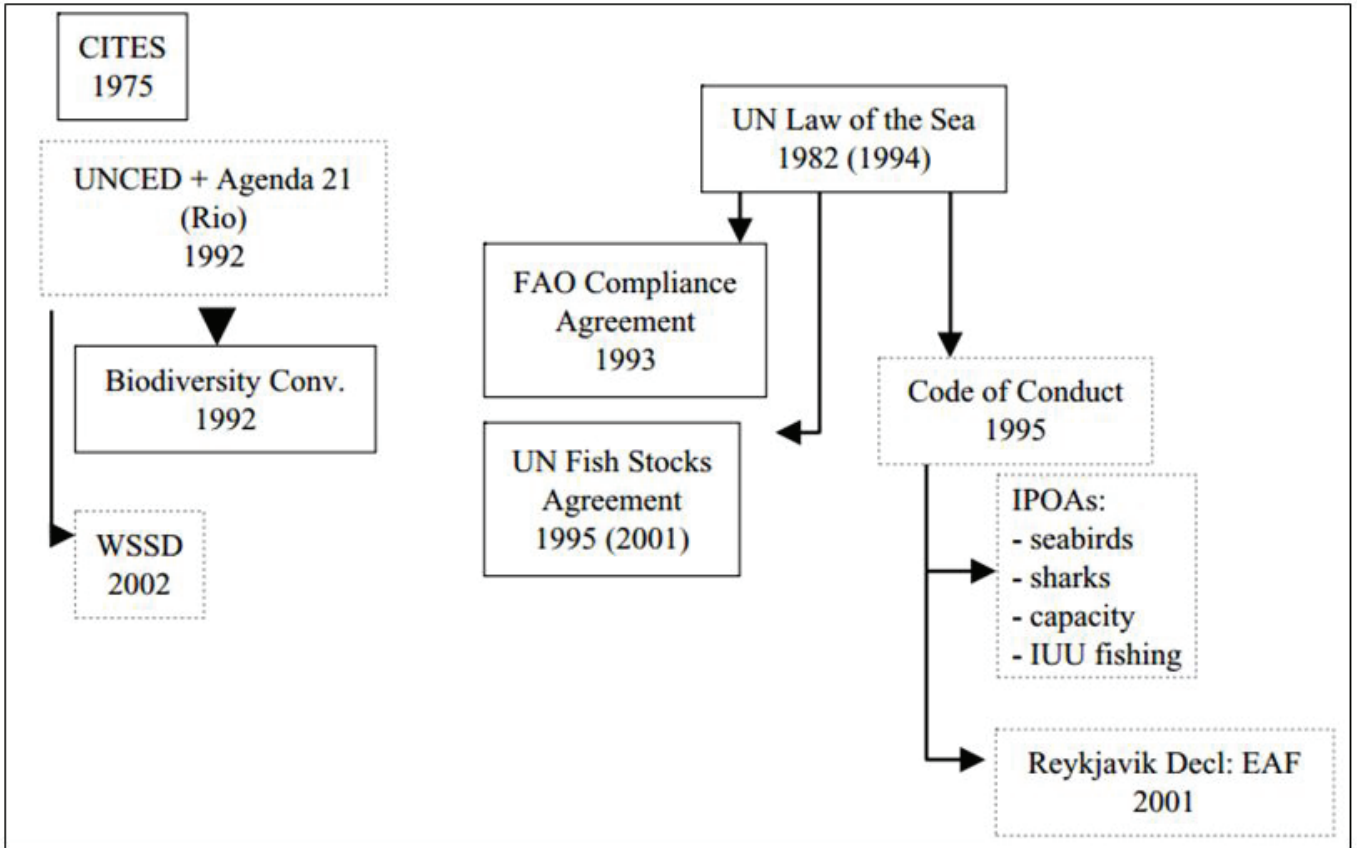
Further, Chapter 15 of Agenda 21 draws attention to the special importance of aquatic biological and



genetic resources for food and agriculture while Chapter 17 emphasizes the development of aquaculture as the way-forward for coastal states to “obtain the full social and economic benefits from sustainable utilization of marine living resources” in areas under national jurisdiction. Article 9.1.1 of the FAO-CCRF (1995) provides that “States should establish, maintain and develop an appropriate legal and administrative framework which facilitates the development of responsible aquaculture”. The CCRF is not only addressed to the State, but to all stakeholders in the sector including governments, private sector, interest groups, aquaculture producers and farmers etc. to ensure an enabling environment for sustainable development of aquaculture.

Additionally, there are regional and technical guidelines developed with a view to ensuring sustainable aquaculture, such as the Beijing Consensus and Implementation Strategy on aquaculture, the Bangkok Technical Consultation on Policies for Sustainable Shrimp Culture (1998), the FAO/ Australia government Expert Consultation on Good Management Practices and Institutional and Legal Arrangements for Sustainable Shrimp Culture (2002) which produced a set of legal and institutional arrangements for sustainable shrimp aquaculture recommended for adoption by the FAO member states, with clear binding instruments in the area of genetically modified organisms (GMOs). A clear direction the GMOs was adopted the Cartagena Protocol on Bio-safety under the Convention on Biological Diversity to protect biological diversity from the potential risks posed by the transfer, handling and use of living modified organisms (LMOs) including import/export of such organisms. The Agreement on Sanitary and Phytosanitary Measures (SPS Agreement) of the WTO identifies the Office international des épizooties (OIE) as responsible for the development and promotion of international animal health standards, guidelines and recommendations affecting trade in live animals and animal products. The OIE International Aquatic Animal Health Code provides the international standards for health certification requirements for international trade in fish and shellfish. The OIE standards are not binding in themselves, but member countries of the WTO are bound by the international standards.

However, the detail, relevance and importance of these international fisheries and aquaculture instruments for the AU-MS, implementation and domestication of the same have remained wanting. The situation is augmented by the fact that majority of the government institutions charged with the management of the fisheries and aquaculture resources can barely conceptualize the link between the National Fisheries Legislations and the international fisheries and aquaculture instruments.



**Figure 3:** Outline of some of the major international agreements directly impacting fisheries and aquaculture at national and regional levels (voluntary, dotted outline; binding, solid outline) (Source: Cochrane and Doulman, 2005).

### **3.0. ASSESSMENT OF DOMESTIC IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS**

#### **3.1 The Process**

Before the UNCLOS 1982, majority of the off-shore and coastal fisheries of AU-MS were dominated by DWFN vessels. However, following the declaration of the convention and the legislation and regulations guiding the management of the “private sea”, many countries enacted legal frameworks for jurisdiction of the countries maritime zones as well as legislation and regulations concerning to the marine environment related to fisheries, environmental policy, integration of resources management, fishery organizations, organization of the maritime fishery activities and protocols for establishing the standards on fishing agreement for access to “surplus” stocks, scientific research for fisheries, coastal resource management and regulations on fisheries in the high seas among others. Further, many of the AU-MS of Eastern Africa region also instituted the required frameworks that established the central or decentralized National authorities for fishery administration and aquaculture development. Additional frameworks have established the related institutions in research, wildlife conservation, environmental protection and regulation, trade in wildlife and domestic animals etc. In this regard, FAO was instrumental in supporting the establishment of the national “Fisheries Departments” charged with development of fisheries and aquaculture in the Eastern Africa region. The Au-MS have also enacted legislation for the management of trans-boundary fishery stocks through the regional fisheries management organizations (RMFOs)

#### **3.2 Model for Analysis of Domestic Implementation of Instruments**

To assess the level of domestication of the international fisheries instruments, three (3) case studies were selected for survey among the fourteen (14) Eastern Africa AU-MS; Eritrea, a coastal state on the red sea; Kenya, a coastal state on the Indian Ocean, and Seychelles - one of the Island states of the Eastern bloc of AU-MS. The analysis looked at both the political and social aspects (PSIA) of adoption and implementation of the international fisheries instruments from the macro-level, meso-level and micro-level, focusing on analysis of constraints to the implementation/adoption of international instruments.

#### **3.3 Ratification/Acceptance/Accession/Approval of Instruments**

The broadness of the international fisheries and aquacultures instruments is complicated by the fact that some of them are relatively novel especially in aspects of application and adaptability to the local and national situations of each AU-MS. This continues to raise serious issues ranging from biological concerns, conservation, transparency and stakeholder consultation in fisheries management, application of the precautionary approach and fisheries MCS among others. The inherent challenges in the implementation of the FAO Ecosystem Approach to Fisheries (EAF) Management are a clear pointer to the issues facing the implementation of the International fisheries instruments in many of the AU-MS. To accurately evaluate the level of implementation of the fisheries instruments, case by case of each country and each instrument was necessary, involving select MS including Eritrea, Kenya and Seychelles. Furthermore, the progress made in ratification of the international fisheries instruments in the AU-MS can be gauged from the fact that many, if not all the Eastern bloc of AU-MS have encountered substantive problems in trying to respond to and ratify the fairly ambitious and wide intentions of the international instruments. Regionally, there is consensus that the good intentions and wider policy of the international fisheries and aquaculture instruments are not reflected in the AU-MS due to the logical difficulties visible in the practical implementation of the ratified instruments.

Generally, the national laws (Constitutions) of the each country provides that; Treaties or Conventions which are ratified by the country essentially forms part of the law of that country. For example, this is

clearly stated in Article 2 (5) (6) of the Constitution of Kenya 2010. Further, such treaties or agreements are deposited with the United Nations Treaties Collection (UNTC), The African Union Treaties Database (AU-TD) as well depositories with various High Commissions and embassies in each country.

The UNTC database also provides information on the status of major multilateral instruments deposited with the Secretary-General of the United Nations and covers issues various including diplomatic relations, maritime, aviation and trade and commerce. The database is routinely updated as new treaties and agreements are added. The following treaties / agreements related to fisheries and aquatic resources, water, aquaculture, wildlife and environment closely linked to international fisheries and aquaculture instruments have been ratified by many of the Eastern Africa bloc of the AU-MS.

**Table 2: Relevant International Instruments and Identified Areas of Legislation**

	Type/Name of International Instruments	Field/Area
	<b>A) AGREEMENTS</b>	
1.	Establishment of the Indian Ocean Tuna Commission, 1993	Fisheries resources
2.	The Conservation Of African Eurasian Migratory Water birds, 1995	Wildlife/conservation
3.	Implementation of Part XI of the United Nations Convention on The Law of the Sea, 1982	Fisheries & Marine Resources
4.	Protection of Appellations of Origin and their International Registration; Lisbon	International trade / Goods movement
5.	Repression Of false or Deceptive Indications of Source on Goods; Madrid, 1891 with changes in 1967	International trade / Goods movement
6.	Trade-related Investment Measures	International trade / Goods movement
7.	Application of Sanitary and Phyto-sanitary Measure	Safety / Conservation
8.	Establishing The World Trade Organization	International trade / Trade relations
9.	Agreement on Agriculture	International trade / Conservation
10.	Agreement on Safeguards (Anti-dumping and countervailing measures), 1994	International trade / Trade relations
11.	Subsidies and Countervailing Measures	International trade / Conservation
12.	Rules Of Origin	International trade / Safety, Conservation
13.	The General Agreement on Tariffs and Trade (GATT 1947)	International trade / Trade relation, Conservation
14.	Privileges and Immunities of the International Tribunal for the Law of the Sea	Maritime, Safety, Fisheries, Conservation
	<b>B. AMMENDMENTS</b>	
1.	Amendments to the International Convention for the Prevention of Pollution of The Sea by Oil, 1954 (London, 1969)	Maritime, Pollution, Fisheries, Conservation
2.	Amendments to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954 (London, 1962)	Maritime, Pollution, Fisheries, Conservation
3.	Amendments to the Montreal Protocol Agreed By the Second Meeting of the Parties; London (1990); Montreal (1997); Copenhagen Amendment (1992);	Phase GHGs to protect the ozone layer
4.	Amendments to Protocol-I to the Protocol of Feb 1978 on The International Convention for the Prevention of Pollution from Ships (Nov., 1973)	Marine & Environmental pollution, Conservation
5.	Amendments to the Annex to the International Convention tor the Safety of Life at Sea (1974)	Maritime safety, Fisheries/Conservation
6.	Amendments to the Annex to the International Convention for the Safety of Life at Sea (SOLAS), 1974	Maritime safety, Fisheries/Conservation
	<b>C. ANNEXES</b>	
1.	Montreal Protocol on Substances that Deplete the Ozone Layer, 1987	Environmental Safety/Conservation
2.	United Nations Convention To Combat Desertification, 1994	Aquatic/Marine/ Conservation

	Type/Name of International Instruments	Field/Area
3.	UNESCO Convention Concerning Protection of the World Cultural Natural Heritage, 1972	Maritime /Conservation
	<b>D. CHARTERS</b>	
1.	African Maritime Transport Charter, 1994	Maritime activities
2.	Charter of The United Nations, 1945	On Peace & Global issues
3.	African Charter on Statistics, 2009	Legal framework for statistics,AU
	<b>E. CONVENTIONS</b>	
1.	Bamako Convention 1991 - Ban of the import into Africa and the Control of Trans-Boundary movement and management of Hazardous Wastes within Africa	Aquatic/Marine & Environmental pollution
2.	African Convention On The Conservation Of Nature and Natural Resources, 1968	Conservation
3.	Convention for the Establishment of the Lake Victoria Fisheries Organization LVFO, 1996	EAC, Resource-use, Management & Conservation
4.	Convention for the Unification of Certain Rules of Law Respecting Assistance and Salvage at Sea, 1910	Sea / marine Safety
5.	Convention on facilitation of International Maritime Traffic, 1965 (FAL Convention, as Amended up to 2002)	Maritime transport, Port régulations
6.	International Convention on Maritime Search and Rescue, 1979	Sea / marine Safety
7.	International Convention for the Safety of Life at Sea, 1974	Sea / marine Safety
8.	Convention on International Trade in Endangered Species of Wild Fauna and Flora CITES	Marine/Bio-diversity Conservation
9.	International Convention for the Prevention of Pollution of the Sea By Oil, 1954	Marine pollution, Fisheries, Conservation
10.	Convention on the Conservation of Migratory Species of Wild Animals, 1979	Marine Conservation
11.	Convention for the Protection, Management and Development of the Marine and Coastal Environment of the East African Region, 1985	Marine pollution, Fisheries, Conservation
12.	Vienna Convention For the Protection of Ozone Layer, 1985	Marine pollution, Conservation
13.	Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal, 1989	Marine pollution, Conservation
14.	United Nations Framework Convention On Climate Change, 1992	Marine pollution, Fisheries, Conservation
15.	Convention On Biological Diversity, CBD	Marine pollution, Fisheries, conservation
16.	Stockholm Convention On Persistent Organic Pollutants	Marine pollution, Safety, conservation
17.	International Convention Relating to the Arrest of Sea-Going Ships, 1952	Maritime jurisdiction, Safety, Fisheries
18.	International Convention on Civil Liability for Oil Pollution Damage, 1969	Marine pollution, Safety, conservation
19.	International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969	Marine pollution, Safety, conservation
20.	Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, 1971	Marine pollution, conservation
21.	International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971	Marine pollution, conservation
22.	International Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, 1972	Marine pollution, Fisheries, conservation
23.	Protocol of 1988 Relating to the International Convention for the Safety of Life at Sea, 1974	Maritime safety, conservation
24.	International Convention on Standards of Training, Certification and watch keeping for Seafarers, 1978	Maritime safety, Fishing

	Type/Name of International Instruments	Field/Area
25.	United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules), 1978	Maritime transport/ jurisdiction
26.	United Nations Convention on the Law of the Sea, 1982	Maritime jurisdiction, Safety, Fisheries, Conservation etc.
27.	United Nations Convention on Conditions for registration of Ships, 1986	Maritime jurisdiction
28.	United Nations (UNCTAD) Minimum Standard for Shipping Agents, 1988	Maritime jurisdiction
29.	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988	Maritime jurisdiction
30.	International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990.	Aquatic / Marine pollution, Conservation
31.	International Convention on the Arrest of Ships, 1999	Maritime jurisdiction
32.	Vienna Convention on the Law of Treaties, 1969	Diplomatic relationships
33.	Vienna Convention on Diplomatic Relations, 1961	Diplomatic relationships
34.	Convention on the Territorial Sea & the Contiguous Zone, 1958	Maritime jurisdiction
35.	Convention on the High Seas, 1958	Maritime jurisdiction
36.	Convention on Fishing and Conservation of the Living Resources of the High Seas. Geneva, 1958	Fisheries / Conservation
37.	Convention on the Continental Shelf, 1958	Maritime jurisdiction
38.	Seamen's Articles of Agreement Convention, 1926	Maritime / Fishing
39.	Repatriation of Seamen Convention, 1926	Maritime / Fishing
40.	Fishermen's Articles of Agreement Convention, 1959	Fishing/fisheries
41.	Seafarers Welfare Convention, 1987	Maritime / Fishing
42.	Maritime Labour Convention, 2006	Maritime / Fishing
43.	Work in Fishing Convention, 2007	Fisheries / Fishing
44.	International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996	Aquatic / Marine pollution, Conservation
45.	1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter of 29 December 1972	Aquatic / Marine pollution, Conservation
46.	Torremolinos International Convention for the Safety of Fishing Vessels, 1977	Marine safety
47.	Vienna Convention on Succession of States in respect of Treaties	Diplomatic relationships
48.	Vienna Convention on Law of Treaties between States & Intl. Organizations /between International Organizations, 1986	Diplomatic relationships
49.	Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, 1975	multilateral diplomacy between States and role of UN
	<b>F. DECLARATIONS / OTHERS</b>	
1.	Langkawi Declaration on the Environment, Malaysia 1989	Environment, Conservations / GHGs
2.	Harare Declaration, 1991; sound and sustainable development	Human rights, Conservation/Sustainable
3.	African Convention on the Conservation of Nature and Natural Resources (Revised Edition) 2003	Water, Fisheries, Nature, Species/genetic diversity
4.	Constitutive Act of The African Union; Lomé Togo, 2000	Unity, Sustainable development, Integration, Policy harmony, promote research, Intl. linkages
5.	United Nations Millennium Declaration,	Intl relations, safety/peace, Sustainable development, Environmental conserve.
6.	Cartagena Protocol On Bio-safety To The Convention On Biological Diversity, 2000	Bio-safety, Environmental conservation

### **3.4 Reasons for low ratification of fisheries-specific instruments**

Majority of the AU-MS have ratified many international legal instruments and especially important legislations such as the UNCLOS (1982) and the UN Fish Stocks Agreement nor the FAO Compliance Agreement (1995). However, the ratification of many of the other fisheries and aquaculture specific instruments remains low despite the fact that many of the governments are aware of the content of such initiatives although these have not been incorporated into national legislation. Some countries have virtually not pursued recent instruments such as the provisions of International Plans of Action related to managing fishing capacity, IUU fishing, shark management and seabird by-catch in long-line fisheries. Consequently, such instruments or the related legislations are clearly lacking in the national legislation. An important omission is the lack of ratification of the Agreement on Part XI of the UNCLOS (1996) by Djibouti and Somalia; the absence of the UR Tanzania, Somalia and +Madagascar, on the UNFSA (1995) ratified members. Eritrea's absence from all the three important instruments (UNCLOS, 1982; Agreement on Part XI and the UNFSA 1995) also signals a worrying state for fisheries management in the Eastern bloc of AU-MS.

Further, many of the Eastern bloc of AU-MS are active members of the Regional Fisheries Management Organization (RFMOs) including the IOTC, although many lack the will (or resources), capacity, poor knowledge on implications for not abiding by RFMOs always or non-memberships, to fully commit to the regional fisheries management. Consequently, many regional fisheries management initiatives have remained at the accession stages with little to show on the ground in terms of implementation. Furthermore, the lack of clear legal requirements within the fisheries legislation of AU-MS to adopt (and enforce) the regional fisheries management initiatives means that many countries merely retain the endorsement on paper while allocating little or no resources towards the implementation of the regional management strategies. On the same note, many of the international fisheries legislations and regional fisheries management initiatives fail to take into consideration the national fisheries legislations of member countries in order to identify entry areas and any clauses which may be adopted onto the regional and international initiatives.

Additional reasons for lack of ratification of these fisheries instruments emanates from the fact that many of the AU-MS inherited non-performing fisheries management laws from the colonial governments and little or no initiatives have been taken to amend, revise, adapt and endorse the legislations while taking into consideration the local environment and the changing global fisheries management climate. The situation is augmented by the fact that many of these countries are at varying stages of development and the regional initiatives therefore range from positions of "rudimentary" management measures to advanced fisheries initiatives in some of the other countries. However, all cases of the AU-MS fisheries management calls for significant initiatives, from both legislative and administrative /management perspective.

### **3.5 Transforming instruments into national fisheries legal frameworks**

Among the Eastern Africa bloc of the AU-MS, different countries follow different approaches to the "internationalization" or incorporation of the different international fisheries instruments into the state's legal structure to allow the implementation of the provisions of the instruments by the state authorities. Consequently, the international fisheries instruments greatly impact the National Fisheries Legal systems depending on the degree of adoption and interpretation. More often than not, the national courts refer to the international instruments in deciding how to interpret and develop the national laws.

The international fisheries instruments require that each State carry out its international obligations with relation to the particular instrument. However, processes used by a State to carry out its international obligations vary, from legislation, executive and/ or judicial measures. Further, States follow different practices in the instruments into the state's legal structure so that the provisions can be implemented by state

authorities. In some cases, international legislation may automatically become a part of national law (general transformation) as soon as a state ratifies/accedes to the international instrument. In such cases, the treaties are considered to be self-executing. In other cases, the international instruments do not automatically form part of the national law of the ratifying states. Under this latter case, the international instrument does not have the force of law without the passage of additional legislations (special transformation) at the national level. In the absence of special agreements, each state decides how to carry out its international obligations. In most AU-MS, the legislature (parliament at the national level) determines whether an agreement is to be self-executing or requires “special transformation” by legislation or appropriate executive action.

In majority of the AU-MS, the greatest challenge to the transformation of the international fisheries and aquaculture instruments remains the bringing together of the various legislations contained in international fisheries and aquaculture instruments into comprehensive, consistent, National Fisheries Legislations or Acts, without practical and political obstacles to the implementation of the same. The situation emanates from the fact that numerous Agreements, Amendments, Treaties, Charters, Conventions, Declarations, Covenants, Protocols, Treaties on the fisheries and aquaculture are not limited to these fields, but touch on the wider areas of environment, maritime transport, maritime labour and conservation, as well as international relations.

### **3.6 Reflection of international instruments in national legislation**

A look at the National Fisheries legislations of the Eastern bloc of the AU-MS shows that the national instruments are based on the international instruments in addition to various responsibilities outlined in various instruments to which the AU-MS are parties.

For example a look at the Tanzania National Fisheries Legislation (Fisheries Act 2003) shows clear outline of the following:-

- i. Administration – a clear statement on responsibilities and functions of the ministers and directors, registration, licensing, enforcement officers and Inspectors, issues of conflict of interests and the relation between ministry, local authorities and fisheries management authorities.
- ii. Development of the fishing industry for sustainable use of aquatic resources.
- iii. Aquaculture Development – including regulation of culture practices, registration of farmers, Control of genetic and species diversity, Use of genetic resources, Monitoring and control of disease in fish and Protection of trans-boundary ecosystems.
- iv. Management and Control of the Fishing Industry including management and control measures, BMUs, Prohibition of foreign fishing in territorial waters, Licensing of foreigners, Prohibition of unlicensed activities and Conservation of fisheries resources.
- v. Fish Quality, Management and Standards - Conditions for quality management, definition of the Competent authority, Prevention of commercial fraud, and Fish marketing.
- vi. Financial Provisions – including charged fees, fines, and establishment of fisheries funds
- vii. Enforcement – include MCS, Power to prosecute, Power of search and seizure, Seizure of items and materials used for committing the offence, Forfeiture of things used for commission of offence, Forfeiture upon conviction and Power to compound offences.
- viii. Offences and Penalties – including the Obstruction of officers, Indemnity, Penalties for illegal fishing, including foreign fishing vessel without licence (IUU), Penalty for violation fish quality standards, Abandoned vessel, gear, fish or fishery products and, Rewards and Protection of informers.
- ix. General Provisions - Sovereignty over biological resources, Environmental Impact Assessment, Research priority areas and facilitation, Call for research information, Call for information from license, Exemptions and Regulations.



Similar reflections are visible in the Fisheries Cap 378 of Kenya (Currently revised as Fisheries Management & Development Bill 2015) and Fisheries Act Cap 197 of Uganda, among others. However, the degree of execution of these instruments among the AU-MS is still low and the updating of the National Fisheries Legislation in view of the various amendments in the international instruments is seriously wanting.

### **3.7 Level of Execution of some key instruments**

#### **3.7.1 Overview of the Execution of the International Instruments**

Within the Eastern Bloc of the AU-MS, there is fairly good level of ratification and inclusion of the international fisheries instruments into the National Fisheries Legislation (NFLs) but there limited progress in practical implementation and execution of the requirements and obligations of the various international instruments. Consequently, the objectives of these “visionary” fisheries instruments have barely been achieved despite the fact that the very problems, ranging from biological, ecological, economic and social, which had beset many fisheries and ecosystems globally, and which these instruments were meant to give redress to, continue and, in many cases, have escalated, especially in the Least developed countries (LDCs), and the developing countries. This low level of the execution of the ratified instruments can be evaluated from the status of the very resources which these international instruments marine fish stocks were meant to safeguard.

According to FAO (2002), the number of under exploited and moderately exploited fisheries resources declined while the overexploited, depleted and recovering stocks increased over the last decade. Evidently, many of the Eastern bloc AU-MS, include the Least Developed Countries (LDCs) such as Somalia, South Sudan, Burundi, Eritrea Madagascar and Ethiopia, show little progress in maintaining fish stocks at productive population biomasses, contrary to the principles of “wise-use” under the UNCLOS 1982, and other instruments such as the FAO-CCRF 1995 and the WSSD 2002 Plan of implementation. Five key explanations can explain the low level of practical execution of the international instruments among the AU-MS.

First, the lack of adequate data and information – due to the data-poor nature of the fisheries and aquaculture resources, there is a very high level of uncertainty on the status of the stocks leading to trial-and-error regimes for resource management. Consequently, many of the AU-MS fisheries target to manage the fisher behaviour rather than following biologically-oriented management despite the data-poor nature of the fisheries.

Secondly, there is a huge conflict between the goals and objectives of the international instruments and the short short-term goals for economic and social growth especially within developing countries of the AU-MS. The result has been the design of management decisions guided by political targets while shying away from sound management options which would likely be unpopular with the electorate in the short-term.

Further, there is a huge disjoint between the overall goals/objectives in fisheries management and the available options for achieving the targets, often punctuated by knee-jack decisions dictated by economic, social and environmental factors. The case of Mozambique’s tuna fleet, envisioned as one the success stories for the sustainable exploitation of the regional tuna stocks, and which is currently moored at the Maputo harbor is a clear indication of the disconnect between management objectives and practical implementation of the same.

The conflicting legal and weak institutional frameworks with clear of clear mandates of the implementing institutions cannot be understated. The situation is augmented by the tradition of top-down management

approaches in fisheries, with little regards for stakeholders, who more than often, are poorly identified. This has resulted in the continued existence of open-access and quasi open-access systems of management in many of the AU-MS fisheries. Furthermore, the national legislative instruments of the individual states may have conflicting objectives especially for the shared fisheries stocks making it difficult to support the management decisions of the joint RFMOs (Cochrane and Doulman, 2005).

Finally, there is lack of financial and administrative capacity (inadequate MCS instruments) both at the national and regional levels to enforce regulations. Therefore, the few management decisions that may be backed by available scientific data and information available cannot be implemented; a situation that is augmented by lame, outdated and inadequate penalties for serious fisheries infringements.

Moreover, the level of execution of the some of the fisheries instruments at the international level is wanting due to the variations in the provisions of the RFMOs with options for non-adherence to some management measures, lack of compulsory provisions for settling disputes weakening fisheries management at both the regional and international level. Further, the efforts to achieve the principles of wise-use and achieve long-term fisheries sustainability in the AU-MS are clearly being frustrated by the widespread and growing thorny issue of IUU fishing (FAO 2003; Hayashi 2004). With alleged links to international crime and money, the issue of IUU remains one of the biggest frustrations to the achievement of sustainable resource exploitation in the Eastern bloc of the AU-MS.

### **3.7.2 *Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, 1973)***

The CITES (1973) presents on the earliest binding international instruments aimed at protecting Endangered, Vulnerable and Threatened (EVTs) flora and fauna to ensure their survival. The Convention entered into force in 1975 and has over 30 000 species listed but with only few species relevant to fisheries. The convention has been well executed by many of the Eastern bloc AU-MS except for some of the countries considered “ailed states” such as Somalia. The reflection of the execution of the CITES (1973) is also evident from its reflection in Fisheries, Wildlife and Forest Acts of all the stable AU-MS. Country to country cooperation is also evident and the regional enforcement of the same, except the threats posed by the IUU menace, stands to be applauded. The most important species relevant to the fisheries of the Eastern bloc AU-MS include whale shark (*Rhincodon typus*), the basking shark (*Cetorhinus maximus*) as well as some species marine fishes traded under the ornamental fish sector. However, numerous marine fish are also raising concern with respect to falling into the EVT.

### **3.7.3 *The United Nations Law of the Sea 1982***

The UNCLOS 1982 entered into force in 1994 and is the “fundamental legal framework governing the use of the oceans and seas, including the legal basis for conservation, management and research of, and into, marine resources” (Aqorau, 2003). This being the point of reference for all fisheries instruments, the UNCLOS 1982 can be said to be the most widely executed international instrument with clear reflection in most of the national fisheries instruments. One of the important executions include the limits of the ocean which defines the various zones under this convention to include the mandate for management of fisheries resources territorial sea, the contiguous zone continental shelf, the EEZ and high seas among others (Part I-XI); the right to conduct marine scientific research in the marine waters and transfer of marine technology (Part XIII-XV); definition and exploitation of the straddling and high migratory species and establishment of various committees and tribunals, and conflict arbitrations (Annex X) and Control /prevention of marine pollution. In Kenya, for example, the National Oceans and Fisheries Policy (2008) is deeply rooted in the provisions of the UNCLOS 1982 and addresses most aspects of fisheries

management and development, including environmental conservation, regional cooperation, research, and surveillance and monitoring, social responsibility and governance. In Mozambique, the National Strategy for Sustainable Development (NSSD) is derived from World Summit for Sustainable Development (WSSD 2002) integrating recommendations from the Johannesburg Plan of Implementation (POI) into the national agenda. Further, the country's Strategic Plan for the Environmental Sector (2005–2015) combined nine (9) instruments including among others, the Strategy for Urban Environment Management; the Coastal Zone Management Strategy; the Urban Solid Wastes Integrated Management Strategy; the Hazardous Wastes Management Strategy; the Biodiversity Strategy; and, the Action Plan for Biodiversity Conservation. Comoros has a National Policy, an Environmental Action Plan and Environmental Strategy elaborated in 1993. However, it is the regulatory structures that remain wanting in most of the AU-MS.

### **3.7.4 The Convention on Biological Diversity (CBD, 1992)**

The Convention on Biological Diversity (CBD, 1992) entered into force in December 1993 with over 175 ratifying member states and has recently been revised in 2003. Three key goals were envisioned in this convention:- i) Conservation of biodiversity, ii) Sustainable use of the components of biodiversity, and iii) Sharing the benefits arising from the commercial and other use of genetic resources in a fair and equitable way. The CBD covers all biodiversity, including that of marine systems including fisheries. The Jakarta Mandate adopted in 1998 carefully address the issue of Coastal and Marine Biodiversity, giving focused attention to integrated marine and coastal area management, sustainable use of living aquatic resources, protected areas, mariculture and alien species(Aqorau 2003).

Analysis of many of the national legislations of the Eastern bloc of the AU-MS shows that the CBD 1992 convention is well enshrined and executed within majority of the AU-MS where policies such as the integrated coastal zone management (ICZM), Marine protected areas (MPAs), Locally Conserved areas and more recently, the Community Conservation Area concept. Institutionally, the AU-MS have developed framework guarded by the State Departments of Fisheries, National Environment Authorities/Councils (NEMA/NEMC), Wildlife Conservation agencies, Forestry Management Service, and the recent County government Spatial Planning departments in some of the countries such as Kenya. Evidently the CBD 1992 appears to be one of the most executed legal instruments at the national and regional levels partly due to the fact that it spans the wider concept of biodiversity, including wildlife, which supports the tourism sector, a lifeline of many of the national economies of the AU-MS. For example, Tanzania has enacted several policies reflecting provisions of the CBD which are related to fisheries and conservation including the Management Plan for the Mangrove Ecosystem in Tanzania (1991); the National Fisheries Sector Policy (1997), the Investment and EIA Guidelines for Marine Parks and Reserves (2001), the Wildlife Policy of Tanzania (1998), the National Integrated Coastal Environment Management Strategy; the Zanzibar National Environmental Policy (2013) among others. Seychelles has a clear National Biodiversity Strategy and Action Plan (NBSAP) prepared in 1997 pursuant to Article 6 of the Convention on Biological Diversity (CBD).

### **3.7.5 The FAO Compliance Agreement, 1993**

The FAO 1993 Agreement was set to promote compliance with international conservation and management measures by fishing vessels on the high seas. The agreement provides an instrument for member countries to take effective action, consistent with international laws, to ensure compliance with applicable international “conservation and management measures for living marine resources of the high seas”; the aggregate of the measures rendering possible the optimum sustainable yield from the marine resources of the high seas so as to secure a maximum supply of food and other marine products. Consequently, majority of the “Conservation programmes” are often formulated with a view to securing in the first place, a supply of food for human consumption, although these objectives are rarely achieved. Under the agreement,

flag states have a special responsibility with respect to granting authorization to fisheries resources of the high seas. However, this should only be done when the flag states are satisfied that they are able to exercise effectively their responsibilities in MCS, and comply with the detailed provisions of the Agreement especially with regards to vessels previously registered in the territory of another state. The overall objective is to enhance flag state control in high-seas fisheries and support the effective management of these fisheries. This instrument appears to have received a fair level of execution among the AU-MS but the lack of capacity to effectively conduct monitoring control and surveillance of the high seas appears to be the biggest challenge to the AU-MS and especially the bloc under the so called LDCs. Consequently, despite the efforts of the AU-MS, especially Kenya, Tanzania, Seychelles and Madagascar, the incidences of the IUU menace appear to be escalating, augmented by the recent wave of piracy and global terrorism at sea. An important aspect of the agreement is that it emphasizes the good exchange of information on all fishing operations on the high seas suggesting that with country to country, regional and international coordination, the IUU menace can effectively be tackled. However, with the political and regional issues of failed and so called “piracy” states, the regional fight against IUU within the Eastern Africa Indian oceans waters is still faced with challenges from countries such as Somalia and Sudan.

### **3.7.6 The FAO Code of Conduct for Responsible Fisheries, CCRF 1995**

The 1995 FAO CCRF and its related four (4) International Plans of Action (IPOAs) is a voluntary instrument, although parts of it are based on relevant sections of the UNCLOS 1982 convention. The CCRF also includes binding provisions under other legal instruments such as the 1993 FAO Compliance discussed in previous section (3.7.5). Holistic in nature the FAO CCRF was the first of the so called “generation of voluntary international fisheries instruments” and covers all aspects of fisheries, including aquaculture, from initial exploration and planning through to post harvest practices and trade. Adopted under the Cancún Declaration of 1992, the CCRF instrument is described as representing the most complete and up-to date expression of the principles of sustainable fisheries management and development with likely substantial impact both at national and international levels (Moore, 1999). The main aspects of the FAO CCRF 1995 agreement can be summarized as:-

- Implementation of measures to ensure sustainable use of marine living resources
- Conservation of target species, non-target species as well as by-catch species
- Prevention of over-fishing and management of excess fishing capacity
- Support for evidence-based (scientific or indigenous) fisheries management decisions
- Application of the precautionary approach to resource conservation/management
- Protection of endangered species and rehabilitation of critical fisheries habitats
- Promotion of selective and environmentally safe fishing gears and practices
- Promotion of international cooperation to facilitate conservation and management of straddling and highly migratory stocks, throughout their range of distribution
- The adoption of conservation measures compatible for both the territorial and deep sea areas.
- Development of effective monitoring, control and surveillance (MCS) measures.

Further, the FAO CCRF 1995 is supported by various Technical Guidelines for Responsible Fisheries including. The most relevant include the:-

- i. FAO Technical Guidelines for Responsible Fisheries No. 1 - Fisheries Operations (1996) and Supplement I VMS (1998)
- ii. FAO Technical Guidelines for Responsible Fisheries No. 2 - Precautionary Approach to Capture Fisheries and Species Introductions (1996)
- iii. FAO Technical Guidelines for Responsible Fisheries No. 4 - Fisheries Management (1997)
- iv. FAO Technical Guidelines for Responsible Fisheries. No. 5 – Aquaculture Development.

- v. FAO Technical Guidelines for Responsible Fisheries No. 8 - Indicators for Sustainable Development of Marine Capture Fisheries (1999)
- vi. FAO Technical Guidelines for Responsible Fisheries No. 9 - Implementation of the IPOA to deter, prevent and eliminate, IUU fishing (2002)

A quick assessment of the regional fisheries and Eastern Bloc of the AU-MS shows that the 1995 FAO CCRF is well ratified by majority of the states. However, the actual execution remains wanting due to the disjoint between the national legislative instruments, the international instruments and traditional practices in existence in these fisheries. A clear example is the continued use of the “illegal” Juya beach seines along the Kenya coast which have lasted for decades and especially within the fisheries of the Lamu Seascape. Secondly, the issue of crude versions spear gun fishing has also proved thorny and especially in the small-scale fisheries where low-levels of investments (due to high levels of poverty) is evident. The debate has also been that whether these apparently crude but high selective gears present a sustainable exploitation of fisheries or not. Such scenarios are clearly reflected in the wider areas of the WIO coast

### **3.7.6.1 The International Plans of Action (IPOAs) under the 1995 FAO CCRF**

The four IPOAs were developed to manage the issues concerned with implementing the 1995 FAO CCRF and are outlined below.

#### **3.7.6.1.1 The 1999 IPOA for Reducing Incidental Catch of Seabirds in Long-line Fisheries**

The IPOA Seabirds (1999) as is commonly referred was designed to reduce the incidental catch of seabirds in long-line fishing and all states with long-line fisheries are expected to take the following actions to reduce the incidental by-catch of seabirds in long-line fisheries:-

- Conduct assessment to ascertain any cases of incidental catch of seabirds,
- Develop National Plans of Action to reduce the incidental catch of seabirds,
- Undertaking national reviews and,
- Establish reporting structure to FAO.

#### **3.7.6.1.2 The 1999 IPOA for Conservation and Management of Sharks**

Commonly referred to IPOA Sharks (1999), this instrument is designed to ensure the conservation and management of sharks and their long-term sustainable use. It applies to states in the waters of which sharks are caught by state flagged vessels, foreign vessels and any states with fishers exploiting sharks on the high seas. States are expected:-

- To assess the status of shark stocks and determine the needs for National POA ,
- Where significant threats to sharks are found, the States should adopt and implement National POAs as guided in Appendix-A of the IPOA-Sharks,
- To produce a periodic shark assessment reports as guided in Appendix-B of the IPOA-Sharks for dissemination to FAO and the international community.

#### **3.7.6.1.3 The 1999 IPOA for Management of Fishing Capacity**

The IPOA–Capacity is aimed at reducing excess fishing capacity in world fisheries through assessment plans, and by strengthening of national and regional organizations to better manage capacity issues. Under the IPOA-Capacity, priority is to be given to those fisheries and fleets with visible evidence of over-capacity and over-fishing.

#### **3.7.6.1.4 The 2001 IPOA to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing**

The 2001 IPOA-IUU was adopted by consensus at the 24th Session of the FAO Committee on Fisheries (COF, 2001) and endorsed by the 120th Session of the FAO Council same year. The commitments under this instrument include:-

- Ratify/Implement UNCLOS 1982, UNFSAs, FAO Compliance Agreement and CCRF,
- Enact national legislation to address all aspects of IUU fishing (including admissibility of evidence in electronic, physical, and new technologies etc.),
- Implement flag States responsibility (develop/records fishing vessels, effective fishing authorization procedures, imposition of sufficiently severe penalties to discourage nationals engaging in IUU fishing, avoiding subsidies to companies, vessels and people engaged in IUU fishing,
- Implement MCS measures with record of all vessel owners and operators, implement VMS, observer programs, conduct training/education to MCS staff and provide adequate funding for MCS operations,
- Enhance bilateral/multilateral co-operation (data, expertise & technology exchange, co-operative investigation of IUU fishing, harmonize national measures and co-operation of MCS efforts and,
- Develop National POAs within three years of approval of the IPOA-IUU to affect the objectives of the IPOA-IUU.

#### **3.7.7 The 1995 UN Agreement for implementation of the Provisions of UNCLOS 1982**

Commonly referred to as 1995 UN Fish Stocks Agreement (UNFSA), this instrument relates to conservation of straddling fish stocks and highly migratory fish stocks, Enacted in 2001, 1995 UN Fish Stocks Agreement was developed partly in response to the insufficiency of UNCLOS 1982 in preventing the overexploitation of high-seas fish stocks, including highly migratory and straddling fish stocks. The primary goal of this instrument is to enhance effective implementation of the relevant provisions of UNCLOS 1982 to achieve the long-term conservation of these stocks. The Agreement details the framework for the stock management and additionally prescribes ways to mitigate the negative impacts on the marine environment, marine biodiversity and maintenance of the ecosystem integrity. The implementation and execution of this agreement's has received a lot of support from FAO in terms of training due to its holistic nature calling for the Ecosystem Approach to the management of the fisheries resources. Although struggling with the regional integration and management of the high sea stocks, majority of the AU-MS have fairly ratified instruments to address the EAF approach and the issues of shared stocks. Of key in the response to the 1995 UN Fish Stocks Agreement was regional action and cooperation establishing the Indian Ocean Tuna Commission, a regional fisheries management organizations (RFMOs) in the WIO. However, some key elements of the RMFOs deter the achievement of the goals which guided their establishment and especially the issues of voluntary membership, the lack of a formal global coordination mechanism to adequately address fisheries management challenges such as IUU fishing among others which call for regional political, economic and social redress.

#### **3.7.8 The 2001 Reykjavik Declaration on Responsible Fisheries**

Recognizing the cause-effect and impacts of fisheries on marine ecosystems and the feedback impacts of the ecosystems on the status and productivity of fishery resources, the Reykjavik Declaration (2001) focused on the issue of introducing ecosystem considerations into fisheries management. The declaration also requested FAO to develop guidelines for the inclusion of ecosystem considerations, which are published under the 2003 FAO technical guidelines for the EAF within the context of the 1995 FAO CCRF. Within this context, and similar to the 1995 UN Fish Stocks Agreement, this instrument is fairly ratified and executed within the Eastern bloc of AU-MS. However, the regional and local politics related to the small-scale fisheries means that the success of the EAF approach may not be visible in the short term.

Therefore, continuous training under the FAO EAF guidelines, together with strengthening of the financial and technical support to reduce poverty and strengthen community resource management remains a key entry into the strengthening of the EAF management in the Eastern bloc of the AU-MS. A clear example is the current push to strengthen beach management units (BMUs) in Kenya, or village fisheries committees (VFCs) in Tanzania which have played a key role in strengthening the community resource management.

### **3.7.9 The 2002 WSSD Plan of Implementation**

Adopted at the 2002 World Summit of Sustainable Development (WSSD) held in Johannesburg, 10 years after UNCED, the WSSD POI was a political declaration and a plan of implementation of the instrument on sustainable development. The 2002 WSSD POI sought to consolidate and reinforce the implementation of existing instruments, setting deadlines for achieving important targets (e.g. application of EAF by 2010), and the maintenance or restoration of stocks levels that can produce the maximum sustainable yield (MSY) by no later than 2015. The WSSD 2002 was an attempt by the international community to promote and secure long-term sustainable outcomes in fisheries and the associated ecosystems. However, the WSSD 2002 instruments were rather overly ambitious, with huge demands in terms of the required technical, financial and institutional capacity to facilitate and sustain implementation. Consequently, majority of the Eastern bloc of the AU-MS are still grappling with resource requirements for the implementation and a global analysis indicates that many countries, and especially the so called developing and LDCs are still in the doldrums with clear signs of “implementation fatigue”

### **3.8 Relationship between Regulators and Stakeholders**

The relationship between regulators and the stakeholders can be gauged by assessing the growing social and international divide between developed world, and LDCs and affluent sectors of society. This has been occasioned by the widening social and economic divide, which results in disengagement from the developing world and poverty eradication programmes. Consequently, majority of the AU-MS have given priority, practically, to economic growth based on sustainable fisheries management. Instead, the poor economic conditions dictate that, without any tangible options for immediate poverty reduction, the governments are often preoccupied with addressing urgent socio-economic problems, often using a knee-jack approach often as the crises occur. Therefore efforts and resources (both time and finances) to develop and support programmes and institutions to remedy environmental issues and concerns are substantially reduced further widening the gap, and increasing the disharmony between regulators and stakeholder.

### **3.9 Consequences of target groups' response for physical problems at hand**

Due to the traditional top-down approach to global issues by both the international community, regional organization and national governments, the push for the execution of the international instruments using the top-down approach, which is reflected in the governments of these countries in dealing with the stakeholder and resource users, has born little fruit. Consequently, in addressing the political concerns and social instability often associated with the top-down approaches, many of the AU-MS have been pre-occupied with tackling the immediate national problems, giving little priority to the global fisheries issues. The result has been a reduced emphasis on implementation of the long-term goals of sustainability and restoration advocated for in the interactional fisheries instruments. The damage caused by increased focus on short-term economic performance, often with greater degradation of marine habitats through increased and less responsible use of natural resources cannot be understated. Despite the global recognition of the mutual societal urgency and responsibility for sustainable development, the divide between the developed countries and the LDCs, and been the regulators (governments) and stakeholder (fishers) has left little room to give re-dress to the foundational issues of reducing poverty, increasing equity and promoting sustainable resource-use practices.

## 4.0. CHALLENGES, CONSTRAINTS AND POSSIBLE SOLUTIONS

### 4.1 Institutional arrangements

The present stage of evolution of international fisheries instruments is fundamentally different from its early periods and the question is no longer the definition of new maritime areas for coastal States eroding further the area of high seas, but whether the solutions to the evident problems faced should be provided by the Eastern bloc of AU-MS, or negotiated by interested parties, or the international community as a whole. Consequently, it is important that fisheries managers at the local, national regional and international levels are aware of the international fisheries instruments and understand the potential benefits of their endorsement and domestication through adoption into the national fisheries legislations including the Fisheries Acts of each and every country. The key issues are i) Should some fisheries activities be regulated or unrestricted, by who, and what extent should they undertake the appropriate regulatory functions; ii) The high seas can no longer be considered an area free from certain regulations just as coastal “States” maritime areas can no longer be regarded as the sole source of jurisdictional authority. Therefore, the developments within both the fisheries and aquaculture sectors call for new approaches to solving the problems facing the Eastern bloc of AU-MS in addressing the evasive challenge of sustainable fisheries and aquaculture development. The Abuja Declaration on Sustainable Fisheries and Aquaculture in Africa which was adopted by the Heads of State Meeting of the NEPAD “Fish for All Summit” in Abuja- Nigeria, August, 2005 presented a rejuvenation of the efforts to ensure sustainable fisheries and aquaculture management in Africa, with key focus on:- i) Support to regional cooperation in fisheries and aquaculture, ii) Support national actions to accede to / ratify international instruments for sustainable use and protection of aquatic resources, iii) implementation of the FAO-CCRF 1995 and the various IPOAs including control of fishing capacity, iv) promotion of trade in fish and fisheries products, v) Enhance fisheries sustainability by adapting existing regional, national and local institutions and regulation to fit sectoral requirements, challenges and opportunities, and vi) Call on the international community to provide the required financial and technical capacity for implementation of sustainable fisheries and aquaculture, among others. However, despite these efforts by the various organs of the African Union as well as various International NGOs, the implementations of sustainable fisheries in the Eastern bloc of AU-MS remain short of the planned expectations; of particular concern has been the conflict between execution of fisheries legislation (e.g. restriction on deleterious, often cheap fishing gears), and national/local politics, as well as the provision of basin human needs such as quality food protein in the fishing communities. It is however encouraging that, despite the low level of execution and MCS on most the instruments, the baseline legislations and legal frameworks are already in place and therefore, it is the social, economic, technical and political support that is needed to execute the implementation of the various instruments both at national and regional levels.

The biggest challenge identified in the legal aspects for adoption of the international instruments was the wide variation in the governing structures in AU-MS and the lengthy and tedious processes followed in getting to transform the international fisheries instruments into national legal chapters in the law. Moreover, different departments with varied stake in the fisheries and aquaculture resources often develop contradicting legislations, augmenting the inadequate capacity of the institutions to deliver on fisheries management services including research, policy, legal requirements, monitoring control and surveillance and financial support. There is a clear lack of planning linkage between research and management resulting in poor project outcomes with significant impact on the overall governance of the fisheries. Furthermore, even in fisheries where the AU-MS have managed to develop fishery management structures and plans for different species e.g. shrimp, lobster etc, the operationalization of such plans has remained a big problem.



The lack of common fisheries policy with the Eastern Africa region of the AU-MS and the presence of varied fisheries agreements between different AU-MS and the EU has often increased conflicts between states licensing vessels in the region. A recommendable approach to regional legislation can be borrowed from the Lake Victoria Environmental Project (LVEMP) which saw the cooperation of the five East African Countries include Kenya, Uganda, UR Tanzania, Rwanda and Burundi in managing the declining fisheries of the Lake Victoria. In the project, legislation on fishing gears, watershed management, fisheries management etc. was enacted among the member states and this saw the rise of the well known concept of Beach Management Units (BMUs) which have fairly been instrumental in the bottom-up approach to fisheries management in the Lake Victoria. Recent approaches by the WWF Africa Programme to enhance grass root capacity by strengthening community based organizations (CBOs) such as the BMUs in Kenya and Village Fisheries Committee (VFCs) in Tanzania has seen better management of the fisheries resources by communities with establishment of voluntary community conservation areas (CCAs) along the coastal fisheries of Eastern Africa. Furthermore, the AU-IBAR efforts train the fisheries managers of many of the AU-MS on fisheries management aspects including the Importance of ratifying the international fisheries instruments and, Negotiations for Fair Fisheries Access Agreements, presents a positive approach to ensure sustainability of the fisheries and aquaculture resources. The importance of strengthening of the regional fisheries bodies (RFBs), training on approaches to incorporation of the International instruments into the national legislation, while taking into account the existence of traditional knowledge and fisheries governance systems cannot be understated.

#### **4.2 Financial Needs**

Majority of the Eastern bloc AU-MS comprise the Least Developed Countries (LDCs) . It is evident that the divide between the developed countries and the LDCs, and the latter's perspective on key national issues explains the lack of focus by the LDCs in establishing the foundational principles of sustainable fisheries resource-use practices. The result is a huge compromise between tackling poverty, increasing equity and executing the international fisheries instruments that would promote sustainable resource-use. Consequently, there is a need to increase appropriate financial and technical assistance to the LDCs to strategically reduce the negative impacts associated with export of surplus fishing capacity when fisheries collapse. For example, a recent study showed the fisheries sector in OECD countries receives about around USD 6.4 billion a year in transfers from governments (OECD, 2006) with 38% going to management, research and enforcement of fisheries while 35% is directed to the provision of fisheries infrastructure. The remaining transfers include direct payments to the sector / to reduce costs of fishing, including vessel construction and modernization etc. However, these subsidies in the OECD countries have often encouraged the growth of excessive capacity and the WTO has engaged in negotiations to clarify disciplines on fisheries subsidies, with an added call in the WSSD Plan of Implementation to eliminate subsidies that contribute to illegal, unreported and unregulated fishing and to overcapacity. This underscores the significance that the international community places on the issue of government support to the industry, and many governments have enacted reforms to shift to more sustainable and responsible fisheries, often with more aid available to the LDCs to support the development of sustainable fisheries and aquaculture noting that the consequence of poverty for both fisheries and the ecosystem cannot be wished away. In the absence of sufficient strategic financial aid and related development support to reduce poverty, social and economic progress would be substantially slower in the LDCs. Therefore, concerted efforts must be put in place to improve governance for the effective management of the resources and improve equity in the distribution of the emanating benefits. The financial aid must target both the fisheries sector, as well as gear to assist the AU-MS to address the fundamental needs of poverty reduction, sustained economic growth, and promotion of sustainable development and achievement of international development goals. Numerous opportunities are available for financial and technical support to the AU-MS and especially the

LDCs to develop sustainable fisheries; for example the EU-IUU fisheries regulations contain provisions for establishment and strengthening of MCS programmes within the EEZs among others. Furthermore, numerous countries including Japan and other members of the OCED provide official development assistance for many of the AU-MS in the Eastern bloc in the field of fisheries as well as financial contributions to international governmental organizations related to fisheries including the RFBs and UN organizations. Additionally, a number of countries pay for their fleets to have access to the fishing grounds of Eastern bloc of AU-MS and such subsidies to the DWFN fleets can easily be recouped to support the development of sustainable fisheries and aquaculture sectors in the LDCs. There is need for an extensive dissection of the financial and technical opportunities available to the AU-MS for ratification, implementation of the international fisheries instruments, and for enhancement of fisheries and aquaculture sustainability within these countries.

### **4.3 Technical requirements**

The AU-MS require wide technical assistance to implement the international fisheries instruments, which must comprise the wide ranging areas of development, from policy changes and elimination of trade barriers to the provision of debt relief. The international community must also understand that eradicating poverty is essential for sustainable development, especially in LDCs of the AU-MS. Therefore, the trade-off between short-term economic growth and long-term sustainable use of resources must be appropriately weighed, and donor assistance, both financial and technical prioritized to help the AU-MS to internationalize the international instruments and translate the goals of these instruments into actions.

Technical assistance should also be geared towards helping the AU-MS align their research with resource management, enhance transparency in the management of the EEZ at the national level and regional level, and tackle the emerging thorny terrorism and piracy which have augmented the already deteriorating problems associated with IUU fishing. Further, additional technical support is need in the development of the offshore fisheries, fishing ports and strengthening of the implementation of the Port State Measures Agreement (PSMA). Assistance in tackling trans-boundary issues of fisher migration and exploitation of common resources while strengthening the synergy with neighbors cannot be ignored. In internationalizing the National legislative frameworks, support is needed in the areas of conflict resolution for legal frameworks, especially between fisheries, wildlife and forestry and related sectors.

### **4.4 Human resource development**

Despite the ratification of many of the international fisheries instruments and their inclusion / adaptation into the National Fisheries Legislation, it is evident that awareness levels among resource managers. Furthermore, both the managers and the many stakeholders in fisheries and aquaculture resources can barely understand the link between the National Fisheries Legislation and the International Fisheries Instruments posing more challenges to the implementation of the same.

It is important that all the AU-MS embark on fostering awareness of the needs for sustainable resources use and responsible use of the aquatic resources among the stakeholders. Furthermore, there is a need to enact policies that enhance the capacity of the resources managers of the AU-MS with each State Department of Fisheries actively working towards the enhancement of training in fisheries. At the regional level, the AU-MS should strengthen national and regional programmes geared towards skills transfer from locations and institutions of best practice while promoting the strengthening of national and regional professional associations while encouraging their active engagement in training and pursuit of the Implementation of the international fisheries instruments. On this front, the AU-IBAR has been instrumental in organization regional workshops while NGOs such as WIOMSA remain a pillar for implementation of the IFI within the WIO region.

#### 4.5 The role of Regional Fisheries Bodies (RFBs)

Regional action and the establishment of the regional fisheries bodies are seen as one of the latter responses to international concerns on the sustainability of the marine fishery resources of the high seas. Regionally, states cooperated to establish regional fisheries management organizations (RFMOs) as implementations of the UN Fish Stocks Agreement. The main aim of the RFOs and RFMOs was to enhance the ability of developing States to participate in high seas fisheries, including access to such fisheries, encourage compliance and deterring non-compliance by flag States, engage in consultations, offer assistance and capacity development, share information, and engage in dispute resolution. In the Eastern Africa region, the Indian Ocean Tuna Commission (IOTC) is the RFMOs charged with regional management of the straddling stocks of the Indian Ocean. Being a FAO body, the membership of the IOTC is restricted to those countries or regional economic integration organizations that are members of the UN and are fishing for tuna in the Indian Ocean. This prevents countries such as Taiwan, a global major fishing entity from being a member of the IOTC. However, the UN Fish Stocks Agreement affirms a prerequisite for effective management of a fishery as the involvement of all those who fish within a region into the management of the fishery. Generally, the IOTC, like other RFMOs, was established to solve fisheries management challenges, including sustainability of the stocks, and continue to act in response to fisheries management challenges with evolution over time to include principles of sustainability. Consequently, the absence of Taiwan in the IOTC membership may be a major factor that can prevent the IOTC from addressing the major fishery challenges within the Indian Ocean adequately.

**Table 3:** The Indian Ocean Tuna Commission; objectives, membership and area of jurisdiction

Year/Mode of establishment	Objectives	Membership	Area of jurisdiction
1993 Agreement for the establishment of the IOTC under aegis of FAO (Article -14 of the FAO Constitution)	Australia, China, European Community, Eritrea, France, India, Japan, Republic of Korea, Madagascar, Mauritius, Malaysia, Oman, Pakistan, Seychelles, Sudan, Sri Lanka, Thailand, United Kingdom and Vanuatu	Indian Ocean and adjacent seas north of the Antarctic Convergence	To promote cooperation among members with a view to ensuring, through appropriate management, the conservation and optimum utilization of stocks ... encouraging sustainable development of fisheries based on such stocks

The following may be outlined as the major challenges facing the IOTC that may hinder accomplishment of its mandate in the sustainable management of the Indian Ocean tuna resources:-

- i. Lack of conservation principles in the constituent Conventions calling for members to find ways of agreeing to consider principles of sustainability when adopting conservation and management measures.
- ii. Limited options to deal with non-parties and exclusion of key players such as Taiwan.
- iii. The adoption of management resolutions by consensus may often take advantage of uncertainties in scientific advice watering down critical management actions.
- iv. Lack of a formal regional/global coordination mechanism to adequately address fisheries management challenges such as IUU fishing due to the free movement of vessels between oceans, augmented by the different management regimes in the AU-MS. For Example, some countries e.g. Kenya currently have no Fisheries Partnership Agreement (FPA) with the EU hence licenses are issued individually to a number of independent companies.
- v. Some states often belong into more than one RFMO making the coordination of the different management decisions a challenge. For example, For example, Kenya is not member of SADC (Unlike Tanzania) and therefore has not benefited from recent programmes to develop domestic fisheries observer programmes like the case of UR Tanzania.

## **5.0. DEVELOPMENT OF FRAMEWORKS FOR ADOPTION OF THE INTERNATIONAL INSTRUMENTS**

### **5.1 Goals and Objectives**

Pursuant to similar recommendations from earlier studies, the Eastern bloc of AU-MS must develop clear roadmaps and frameworks for plans of action for the adoption and execution of the international fisheries and aquaculture instruments that ensure wise-use of the fisheries resources for sustainable development. The AU-MS must, with the support of the RFBs and the African Union:-

- i. Educate the MS on importance of enact legislations for ratification of the international and regional fisheries and aquaculture instruments, while highlighting the benefits in both financial and technical terms to cushion against the enactment of such legislations. For example, the challenge with small-scale IUU fisheries has often been legislation on one hand, and the community needs for cheap, reliable sources of fish protein food.
- ii. Enact legislations that mandate the adoption of clear roadmaps at the national and regional level with POAs and strategies to eliminate deleterious fisheries practices and support sustainable fisheries and aquaculture practices,
- iii. Review and ensure that the countries supreme legislation (the Constitution) provides for the protection of the international instruments in each MS.
- iv. Ensure that the MS legislations provide for harmonization of all existing laws (traditional/customary, policies and legislations) to accord new legislation on sustainable fisheries and aquaculture development.
- v. Similar to other sectors of international law, in cases where the international instruments conflict with the national or regional legislation, priority should always aim to support the legislations that enact the sustainable use of the fisheries and aquaculture resources.

The effective adoption of the international instruments into the national and regional legislations often presents challenges due to the likely costs of effective monitoring, control and surveillance (MCS); therefore, the roadmaps to the full ratification of the International fisheries instruments should be clearly designed comprehensive “toolboxes” outlining all the areas of sustainable use of the aquatic resources with focus to prevent/deter and eliminate deleterious practices.

### **5.2 Developing the Frameworks for adoption of the instruments**

#### **5.2.1 Framework I: Public and political support for implementation of instruments**

A worrying element of the Eastern bloc of the AU-MS is the huge disconnect in the national legal, institutional and policy frameworks with clear lack of synergy or integration in terms similar to other regions such as the European Union and the Association of South East Asian Nations (ASEAN) among others. This is despite the close connectivity of the Eastern Africa AU-MS geographically, ecologically, historically, economically, culturally and politically. More often than not, the northern countries of the Eastern bloc of the AU-MS are often leaned towards the Arab world; the middle towards the West and Asia, while the south often align with the SADC making the synergy between the RFBs legislation and the national legislations an uphill task. There is a need to strengthen the regional forum and enact a clear framework for pursuing policy commonality on coastal and marine environment under various conventions such as the Nairobi Convention, protocols and Action Plans. However, the extent to which the AU-MS are willing to align their national frameworks to the emerging regional legal and policy frameworks remains limited. For example, despite the commonality of the problems facing the fisheries of the WIO, and the need to chart appropriate roadmaps to tackle these problems, many of the Eastern bloc AU-MS focus on balancing required actions against the likely public and political outcry within the countries and regions. Consequently, despite the spirited signing of agreements, conventions and treaties etc, the redress to the real issues on the ground

remains lukewarm. Therefore, there is a need to address the policy dilemma of enhancing integrated national and regional policies, and legal/institutional approaches without undermining existing/established national and traditional governance structures. Regional instruments including the Nairobi Convention and its protocols (1985, revised 2010), under which the region is organized as a UNEP Regional Seas Programme can clearly be used to drum public and political support for implementation of international fisheries and aquaculture instruments with linkage to regional organizations such as the Indian Ocean Tuna Commission (IOTC), the Indian Ocean Commission (IOC), the Western Indian Ocean Marine Sciences Association (WIOMSA). Evidently, the need for both public and political support for implementation of the International fisheries and aquaculture instruments in the Eastern bloc of the AU-MS cannot be overstated.

### **5.2.2 Framework 2: Awareness raising and support for instruments**

Noting that level awareness and support for the international fisheries instruments is still low; there is need to involve all fishery actors, from the fisheries ministries at the State, provincial, and county/district, the fishers organization including Fisheries cooperatives, Beach Management Committees (BMUs) ,Village Fisheries Committees (VFCs) etc.

The obvious entry point would evidently be to start with raising of awareness about the importance of the international fisheries instruments in sustainable resource development, and drum up support at the national, regional and global level, then refocus the training to the specific sectors within the State Departments of Fisheries, Environment authorities, Coastal zone planners, etc.

### **5.2.3 Framework 3: Capacity development for implementation**

The ability of the people, organizations/institutions and society of stakeholders to manage the ratification, adoption and implementation of international fisheries instruments into the National legislation successfully is a crucial determinant of the success of the “wise-use” principles enacted in the instruments. Capacity development is an essential element of the holistic approach to implementation of the international instruments, but a look at the fisheries sector in the AU-MS shows that human and institutional capacity remains wanting despite the presence of the elaborative institutional and legislative frameworks. Consequently, capacity development in the AU-MS must be initiated and owned by the sectoral actors in the individual countries themselves, from the individual, organizational and societal levels with regional organization including the AU, the AU-IBAR, FAO, UNDP and others including the donor community and external actors only playing a supportive role in the entire process of instrument implementation.

In addition to the development of the infrastructural, technological, information systems, financial resources and personnel capacity, the related soft capacities including strategic management capabilities, process steering- or interaction- and cooperation competences must be given clear focus. Therefore, the development of and, strengthening of operational capacities on the one side must go hand in hand with development of adaptive capacities including learning from experiences and adjusting to changes on either of the two divides.

### **5.2.4 Framework 4: Development of National Legislations and Strategies for Implementation**

In order to ensure the wise-use of the fisheries resources of the AU-MS, there is a need to ensure that clear regional and strategies are developed for each international instrument of the following aspects:-

- i. Stage I - Approval and ratification process (including the legal requirements) for each international fishery instrument to raise the instrument profile. Strategies should provide a clear national and regional framework for adaptive implementation of the wise-use principle in integration while ensuring that each framework is tailored to the local conditions

- ii. Clear identification of the benefits of each instrument especially on the socio-economic aspects should be identified and included in working documents to ensure that all stake holders understand the importance of ratifying each instrument
- iii. Legal and institutional integration—the approach to design of the national instruments and implementation strategies should ensure institutional co-ordination, co-ordination of national, regional and local authorities, involvement of non-governmental organizations and other competent organizations.
- iv. A look the numerous instruments shows that many of them have remained stuck at the post-ratification stage with little or no execution. Learning from good practice and criticism of previous strategies, and especially the integrated Coastal Zone management, the development of national instrument and implementation strategies should:-
  - a. Recognize the political context of in each country, seeking to influence policy beyond the remit of the National ministry/departments charged with implementation.
  - b. Harmonize the approaches by setting out the practical form and scope of the institutional structures required to achieve effective coordination,
  - c. Harmonize approaches across the wider partnership and ownership and set the framework for wider engagement through participative structures, capacity building and raise awareness.
- v. Ensure that the design of the instruments and the implementation strategies are given a legal basis and include a long term approach to the activity to ensure that the implementation strategy is cushioned by continuous adaptation from MCS results
- vi. The strategies for implementation should have clear set delivery of tangible results on the ground with adaptive tailor-made plans strategies with time lines for realistic action plans for implementation
- vii. To support the long term implantation of the international instruments, capacity building and financial proposals should be integral to ensure there is adequate support for the implementation process
- viii. The implementation strategy documents should be simple with much a technical hullabaloo; this should enable all those involved in the implementation (partners and stakeholders) to visualize the problems, potential futures, and to find solutions.

### **5.2.5 Framework 5: Implementation of participatory monitoring and auditing systems**

In order to implement MCS at the institutional and stakeholders level, and ensure there is adequate participatory and monitoring/auditing of the ratification and execution of the international fisheries instruments, the National legislative instruments must clearly identify the authorities are responsible for enforcement of the fisheries laws, clearly define the different parts of the legislation/policies, requirements for monitoring, control and surveillance, the penalties for violation, and support institutions.

For a start, all the AU-MS need to conduct a performance audit of the ratification, level of execution, and assess the links between violation of fisheries instruments and the absence of a clear policy framework, and operational mechanisms and lack of sustainability of the fisheries and environmental resources. However, in implementing a MCS for implementation of the international fisheries instruments the following issues must be taken into account:-

- a. Levels of public expenditure for different policy instruments and policy responses - understand the financial expenditure involved and the accountability systems for expenditures in each aspect of fisheries resource management.
- b. Risks to the fisheries resources in each of the AU-MS; analyze risks to define where ratification/execution of the international fisheries legislations is most relevant and useful, with use of scientific evidence and expert advice.
- c. Level of government expenditure and accountability in relation to monies earmarked for specific fisheries legislation and directives, and which must also be subjected to compliance or performance audit.

In the auditing of the ratification and execution of the international fisheries instruments, the auditability of the process, with specific criteria outlined for the auditing of the entire systems of ratification, design into the national instruments and execution:-

- a. Determine the number and types of international fisheries-related instruments signed by the government
- b. Assess the degree to which the national instruments are incorporated into the national fisheries legislation including identifying the agency, institution etc charged with execution.
- c. Determine whether the government has any policies or strategies in execution of the ratified instruments including timelines, and generally, MCS (monitoring, control and surveillance) systems in place.
- d. Determine whether the budgetary allocations for the ratified instruments exist in the national /state budgets, and whether the governments budgeting approach incorporates environmental costs and liabilities within the boundaries of the ratified fisheries instruments.
- e. Determine whether there is any external funding and all kinds of support related to the ratification, incorporation into the national instruments, and the execution of the same, including the sustainability of such support for the member countries to fulfill their obligations related to the international instruments. Of key would be assessment of any tie to political systems and related dynamic scenarios.

Once all the systems are in place, the executing agency must identify and outline clearly the objectives, criteria, questions (aspects of the enquiry), and the approach to the auditing process including the design of the audit matrix, risks etc

### **5.3 Responsibilities and Timing**

In ensuring that the entire process of ensuring that the international instruments are implemented in accordance with the principles of wise-use of fisheries resources, there is a need to ensure that clear roles for all agencies of the government and stakeholders involved in the entire processes associated with the international instruments. Reporting remains a requirement in the auditing process. Consequently, reporting requirements must be instituted at each stage, from the implementing agencies on the ground to the various levels of government, where the instruments make it a requirement for each of the member states to report to the United Nations agencies or other international agencies involved. The responsibilities for each executing agency should include, among others, proper data collection (evidence based reporting), performing analyses, and reporting on findings. In all cases the standard reporting formats should be adopted to enable the audit process for compliance, in terms of meeting national and international reporting obligations, as well as on the quality of the data and information with independent review or assurance provided where necessary.

Due to the rapidly changing global issues augmented by climate change and global warming which impact on the fisheries resources, majority of the international instruments have undergone numerous amendments by the international community to make them more appropriate in delivering the laid out objectives. Consequently, member countries must be called upon to review their implementation programmes with reasonable time scales (~5 years) to ensure that the national legislations don't go stale. Where an international instrument has been amended, the member countries should be called up to review their national legislations within periods of 1-2 years with funding support, because this has often been a major challenge in the AU-MS states on the updating of the international instruments and agreements.

### **5.4 Expected Outcomes**

The proper design of an auditable ratification, incorporation into the National Legislation of, and execution of the International Fisheries Instruments through structured National Fisheries and aquaculture legislation is expected to deliver/drive the achievement of the objectives of the principles of "wise-use of the fisheries

resources”. In addition, by adopting or ratifying these international instruments into their national legislations, and especially key binding instruments, the AU-MS avoid sanctioning by RFMOs on various issues e.g. the FAO Compliance Agreement on Conservation and Management Measures by Fishing Vessels on High Seas (1993), the UNFSA 1995 etc. Furthermore, the adoption of the Port State Measure Agreement including the four (4) Plans of Action; IPOA-IUU fishing, IPOA-Capacity, IPOA-Seabirds and IPOA-Sharks would facilitate information exchange and hence reduce the requirement and costs Monitoring Control; and Surveillance (MCS) as highlighted by Seychelles. In addition to the above benefits/outcomes from the enactment and implementation of the international instruments with resultant globalization of the shared fisheries stocks and the EEZ, the ratification and execution/implementation of the international fisheries is also expected to deliver the following:-

- a. Development of adaptive management approaches, frameworks and measures.
- b. Development of National fisheries legislations which take into account the regional nature of fisheries (no boundaries), difficulties associated with monitoring, control and surveillance both from enforcement standpoint and the gathering of the data and scientific information required to drive fisheries management. In this context.
- c. Increased awareness of the importance of the fisheries resources to country and the impact/non-impact of various management programmes, borrowing from global case studies. The “ownership” attitude among stakeholders is often one of the key causes of failed fisheries legislation
- d. Increased awareness of the international fisheries instruments at all stakeholder levels thus making the planning, implementation and evaluation of the fishery governance process and conservation easy to manage/implement. International/regional arrangements have often been the key drivers of the national legislative actions and thereof without sustenance, and then legislation at the national level is bound to fail due to changing political climate.
- e. Globalization has brought new concerns over environmental protection and the support given to trade goals. Consequently, the global trade community cannot be left out in the enactment of the international and National Fisheries Legislative instruments.
- f. The diversity of global developments in view of socio-economic and environmental issues means that the ratification/execution/implement of the international fisheries and national instruments cannot solely depend on fisheries biology alone



## 6.0. CONCLUSIONS

Majority of the AU-MS have ratified the international legal instruments and especially the key legislations such as the UNCLOS (1982) and the UN Fish Stocks Agreement nor the UN Compliance Agreement (1995). However, the ratification of many of the other fisheries and aquaculture specific instruments remains low despite the fact that many of the governments are aware of the content of such initiatives. Some countries have ignored recent instruments such as the provisions of International Plans of Action related to managing fishing capacity, IUU fishing, shark management and seabird by-catch in longline fisheries. Consequently, such instruments or the related legislations are clearly lacking in the national legislation. The implementation of the international fisheries legislation can however, learn from feasible coordination implementation, such as the Lake Victoria Environmental Coordination Project, the water catchment and wide basin resource management, and the Integrated Coastal Zone Management initiatives. These cases reflect some commonalities; trans-boundary, strengthening of institutional and legislative structures, and increased financial funding to the initiatives. Therefore, the management of the Indian Ocean fisheries and especially the tuna fisheries under the IOTC can borrow from the regional initiatives which have shown success, in order to tackle the increasing fishing intensity and especially the current global problem of illegal, unreported and unregulated (IUU) fishing.

The main challenges identified in ratification and execution of the international fisheries ranged from poor design and implementation of the institutional and legal frameworks, inadequate financing of the activities associated with the implementation of the international instruments. Furthermore, the technical requirements associated with these instruments, the need for development of the human resources, and the role of both the regional and international fisheries bodies cannot be ignored in the efforts to ensure successful implementation of the national instruments.

The diverse nature of the AU-MS in terms of social, economic, cultural and strengths in organizational structures, the nature of the local fisheries instruments the states and nature of the fisheries, management structures, and legislations of each member country cannot be ignored. Furthermore, the regional challenges and especially related to the nature of the EEZ and the DWFNs, IUU etc; strengths in regional monitoring control and surveillance calls for stronger interventions by the RFBs which should provide the global link and provide for a framework for the management of key fisheries including the straddling and highly migratory fish stocks.

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## 8.0. ANNEXES, TABLES AND FIGURES

### **Annex 1: List of Persons Consulted, including the Training Workshop for FAA in East and Southern Africa, February, 2016; Maputo, Mozambique**

No.	Name	Nationality	Position / Institution
1	KAITIRA IBRAHIM KATONDA	TANZANIA /BURUNDI	Director of Fisheries / Lake Tanganyika Authority (LTA)
2	HALIDI ALI OMAR	COMOROS	Spécialiste / Commerce et Réduction de la Pauvreté Direction Générale du Commerce
3	SAID BOINA	COMOROS	Directeur / Du Centre National De Contrôle Et De Surveillance Des Pêches Centre National De Contrôle Et De Surveillance Des
4	SOILIH MAHAMOUDOU	COMOROS	Procureur / Général Tribunal De Moroni
5	AHMED DARAR DJIBRIL	DJIBOUTI	
6	DJIBRIL OSMAN HOUFFANEH	DJIBOUTI	General Secretary / National Commission of Human Rights
7	MOHAMED CHEHEM	DJIBOUTI	Chief Officer / Technical Departments of Fisheries Fishing Harbor Ministry Of Fisheries Djibouti
8	ESHETE DEJEN	ETHIOPIA	Fisheries Expert /Inter-governmental Authority on Development (IGAD) in Eastern Africa
9	EPHRAIM WAIRANGU	KENYA	Principal Fisheries Officer / State Dept of Fisheries, Kenya
10	JOSEAH .K. ROTICH	KENYA	Chief Trade Development Officer / Department of International Trade
11	MERCY OLANDO	KENYA	State Counsel / Office of the Attorney General and Department of Justice
12	GILBERT FRANCOIS	MADAGASCAR	General Manager/ Fisheries Department.
13	AUBREY HARRIS	MOZAMBIQUE	Secretary / South West Indian Ocean Fisheries Commission (SWIOFC)
14	JOSE ARISADO	MOZAMBIQUE	Senior Officer / National Director of Sea, Island Waters and Fisheries
15	ARNALDO BERNARDO	MOZAMBIQUE	Jurist / Ad Nap, Maputo
16	RICKY –BARBÉ	SEYCHELLES	Trade Officer / Ministry of Finance, Trade and Blue Economy
17	YANNICK ROUCOU	Seychelles	Senior Legal Officer / Seychelles Fishing Authority
18	ABDI ALI YARE	SOMALIA	Adviser / Ministry Of Fisheries And Marine Resources
19	ABDULLAHI H. DUALE	SOMALIA	Director/ General Ministry of Commerce & Industry
20	ADIL H. KHALFALLA	SUDAN	Legal Advisor/ Ministry of Justice
21	AMER NAFIE EKHLAS A.	SUDAN	Trade Policy Officer /Head of the Good Department
22	NADIA ELDERDIOMER KAROUN	SUDAN	Fisheries Expert / Ministry of Livestock , Fisheries and Rangeland

## **Annex 2: Organizations Assessed for Incorporation of International Instruments in Eastern Africa**

<b>EASTERN AFRICA : Uganda, Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Madagascar, Mauritius, Rwanda, Seychelles, Somalia, South Sudan, Sudan, UR of Tanzania</b>
Common organizations in the member countries 1. Ministry of Fisheries /State Departments of Fisheries – Policy, Legislation, MCS, 2. National Environment Management Authorities/ Council 3. Wildlife Conservation Authorities /Services/ Directorates and for CBD-CITES office/contacts 4. Research Organizations in Fisheries for member countries. 5. Ministry of Water and Environment /Water Resources Management Authorities. 6. Ministry of Public Health / Directorates Charged with Pollution control. 7. WWF Coastal East Africa, WWF Africa 8. Flora and Fauna International 9. Wildlife Conservation Society (WCS) East Africa Offices 10. IOC – Smartfish 11. Maritime and Ports Authorities for the member countries
<b>Eastern Africa</b>
Special focus on:- <ul style="list-style-type: none"><li>• Dolphin conservations especially in both KMNR and WMNR, IUUs, Lake Victoria Fisheries water management, fisheries and aquaculture etc</li><li>• River Systems and endangered species, wetlands and biodiversity etc</li><li>• Dolphin conservations in Zanzibar, IUU etc, Lake Victoria Fisheries water management, fisheries and aquaculture, Lake Tanganyika etc</li></ul>

## **Annex 3: Rules for the interpretation of International Instruments**

The Vienna Convention on the Law of Treaties provides the International law and the guiding rules for the interpretation of instruments / treaties specifically in Article 31 and 33 as shown below:-

### **Article 31: General rule of interpretation**

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
  - a. Any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
  - b. Any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
  - a. Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
  - b. Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
  - c. Any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.

### **Article 32: Supplementary means of interpretation**

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

- a. Leaves the meaning ambiguous or obscure; or
- b. Leads to a result which is manifestly absurd or unreasonable.

### **Article 33: Interpretation of treaties authenticated in two or more languages**

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.
2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.
3. The terms of the treaty are presumed to have the same meaning in each authentic text.
4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

### **Annex 4: Data Collection & Survey Tools for Fisheries Instruments**

#### **A) Analysis of the Fishery Dimensions**

- i. Name of the fishery (species of target and non-target groups)
- ii. Number of fishers involved in the fishery (KIs and fishery statistics)
- iii. Main gears employed in the fisheries?
  - a. What type of gear: passive / active gears?
  - b. What time of day is gear used (day/ night)?
  - c. What is the estimated number of gears (including sizes) in the fishery?
  - d. What are the estimated catch-rates of the species by gears, fishing crafts and/or fishers?
  - e. Any developments/modification in fishing gears/methods over the past 10 years?
- iv. Main type of vessels employed in the fisheries?
  - a. What is the estimated number of vessels (including sizes) involved in the fishery?
  - b. What is the approximate number of each of these types of vessels?
  - c. What time of the day gears are used (daytime fishing / night time fishing)?
  - d. Are the vessels used during daytime fishing or night-time fishing? Probe for details.
  - e. What is propulsion modes in the vessels employed in the fisheries (pole, sail, paddle, engine etc.)?
- v. Socio-economic importance of the fishery
  - a. How much of the species catch is landed in each of the East African States?
  - b. What proportion of the landings is consumed as food at national level?
  - c. What proportion of the landings is sold regionally (East Africa)?
  - d. What proportion of the landings is exported outside the East African States?
  - e. What are the estimated costs of the fishing operations at each scale (Local currency and US\$)
  - f. What are the expected returns for each investment level (Small-scale, Commercial, and Semi-industrial)?
  - g. What is the average income of from the fishery trade to fishers at local level and to the national economies of the East African member states?
- vi. Ecosystem use and Exploitation strategies
  - a. Does the fishery impact juveniles (of target species) and or other species? If so explain.
  - b. Level of by-catch in the fisheries - list species and sizes incl. cetaceans and marine turtles.
  - c. Fishery impact on other habitats: coral reefs, sea grass beds, mangrove fisheries etc? Elaborate
  - d. Are there existing conservation regulations at the beach, coastal and national levels with reference to the sustainability of the fishery stocks? Elaborate
  - e. Are there existing exploitation strategies guided by fisheries, CBOs, BMUs or fishers?
  - f. What is the structure of the market? Does it drive demand for undersized fishing, illegal etc.
  - g. What are the barriers to entry into the fishery/what are the drivers to the reported cases of IUU?

- h. What are the existing policy, legal framework and institutional arrangements for management of the various fisheries?
- vii. Management measures in the fisheries sector – Beach, Coastal and National levels
  - a. What is the current management regime of the fisheries? Define available instruments locally e.g. Fisheries Act, BMU regulations etc.
  - b. Are there any existing management plans for specific fisheries? E.g. tuna, beach seines etc.
  - c. Are users aware of the current management measures/plans for the fisheries?
  - d. What are strengths, weakness and gaps in fishery management and development? (In the eyes of fishers, key informants, stakeholders and expert opinion/fishery managers).
  - e. How can the strengths, weakness and gaps in fishery management and monitoring, control and surveillance be addressed?
  - f. Are there planned management measures identified/driven by needs-assessment at the local and national level?
- viii. Management measures in the fisheries sector – Regional and International
  - a. What are the current management regimes of the fisheries at the regional and international levels? (Define the available instruments regionally, trans-boundary etc. IOTC etc.)
  - b. Are there any existing management plans for specific fisheries, e.g. Tuna?
  - c. Are the fishery managers at both the Institutional, National and regional government levels aware of the current management measures/plans for the specific fisheries?
  - d. What are strengths, weakness and gaps in fishery management and development that support/hinder adoption/implementation of the international fishery instruments? (In the eyes of fishery managers, institutions, government, conservationists and regional/international NGOs).
  - e. How can the strengths, weakness and gaps in fishery management be addressed at the national, regional and international level?
  - f. Are there any emerging evidences and adaptive management measures for the fisheries that can be identified as per needs assessment at the regional and international levels?

## **B) Social Analysis of the Fisheries Instruments and Policy Reforms**

- i. Stakeholder Analysis Matrices
  - a. To what degree do the specific policy reforms / instruments impact stakeholders?
  - b. What is the stakeholder's level of interest in the specific fishery instruments or policies?
  - c. What is the level of importance attached to satisfying the needs and interests of each stakeholder? (fishers, CBOs, local/communities, national government, regional organizations)
  - d. What is the level of influence of the various stakeholders in facilitating/impeding policy design and implementation?
  - e. What is the level of resources that stakeholders (including the national governments) possess and are able to bring to bear on the policy implementations/processes?
- ii. Political Mapping
  - a. What is the structure and political viability of the implementing institutions and political regimes?
  - b. What are vulnerabilities of the implementing institutions and political regimes?
  - c. Is there any existence of opposing alliances and potential support coalitions?
  - d. What is the level of authority possessed by the implementing institutions and political regimes?
  - e. What is implementation capacity of the various actors in the fisheries sectors?
  - f. Are there any new directions in policy or definition of the international instruments of fisheries and aquaculture management?

- iii. Network Analysis
  - a. What is the organizational structure and functioning of systems for the implementation of the fisheries instruments?
  - b. What are the organizational behavior, inter-organizational relations, social support, and the flow of information, knowledge, and resources within the fishery stakeholders?
  - c. What are the potential impacts of policy changes or implementation on relationships among a set of fishery actors?
- iv. Country Social Analysis
  - a. How is the distribution of assets, economic activity, and access to markets across different social, country and regional economic blocks/groups?
  - b. How do local institutions and political systems affect policy design and implementation? Especially highlight inclusion/exclusion of the poor fishery actors?
  - c. What are the opportunities and constraints in development that emerge from the specific country social context?
- v. Power Analysis
  - a. What are the formal and informal power relations and structures, how do they affect/are affected by policy interventions and development cooperation? Highlight role of donors on policy?
  - b. What are the political contexts/conditions in implementation/adoption of the fisheries instruments?
  - c. What institutional/structural factors affect “the political will” to adopt the fisheries instruments?
  - d. Are there any country strategies (strategic/realistic) with more realistic time-frames and indicators for judging progress, improving risk analysis, and challenging assumptions in the implementation of the fisheries instruments?
  - e. Strategically, how does the change/retardation of the fisheries instruments occur? How do these changes affect the poor fishery actors?
  - f. Where does the “real power” in the society lie: distribution socially/ institutionally, and regionally?
  - g. What are dynamics of change (incentives, capacities of change-agents) operating within particular institutional domains and policy processes)?
  - h. What is the role of external forces (e.g. donor actions, aid modalities, and influencing strategies on the implementation processes)?
  - i. What are the links between change, sustainable fishery management and poverty reduction (expected change, impact on poverty, time-scale, and implications) of the various instruments?
  - j. What are operational implications of the adoption of these fisheries instruments?
- vi. Analysis of drivers of Change (DoC) in adoption of fisheries instruments
  - a. What are the political, economic, social, and cultural forces that inform change in a local, country and regional context of the fisheries policies and instruments?
  - b. What are the links to key policy and institutional “drivers” of change in the fisheries instruments that provide the context for sustainable fishery management and poverty reduction?
  - c. In structural/institutional contexts, what are the policy processes, and long-term constraints to implementation of the fisheries instruments and sustainability of the fisheries resources?
  - d. What is the ability/legitimacy of AU-MS to adopt the various fisheries instruments and enforce the associated rights?
  - e. What is the nature of incentives and disincentives to fisheries growth and development vs. adoption and implementation of the fisheries instruments?
- vii. What is the influence of external forces, including donors as political actors themselves?
- viii. Stakeholder Analysis Matrices
  - a. What is the nature of interest (positive/negative) of various social and political groups in the fisheries instrument?

- b. To what extent do the stakeholder interests converge/overlap?
- c. What is the importance stakeholder interests to the implementation of a particular fisheries instruments or policy reform, and
- d. What is the influence of the stakeholder interests over the fisheries instrument adoption?

### **C) Analysis of the Research and Policy Development (RAPID) Framework**

The RAPID framework will be used to understand if research-based evidence in the fisheries instruments and development policy/practice has influence on the policy making and poverty reduction especially among the poor stakeholders.

- i. i). Political context:
  - a. Who are the policy makers?
  - b. Is there policy-maker demand for their agendas and their new ideas?
  - c. What are the sources/strengths of resistance and opponents?
  - d. What is the policy-making process?
  - e. What are the opportunities and timing for input into formal regular policy processes?
- ii. Evidence
  - a. What is the current theory, credibility over the long term?
  - b. What are the prevailing narratives?
  - c. How divergent is the new evidence, what are practical solutions to problems?
  - d. What sort of evidence will convince policy makers and stakeholder to adopt the fisheries instruments, legitimacy, participatory approaches, and clarity of policy options?
- iii. Links
  - a. Who are the key stakeholders, partnerships?
  - b. What links and networks exist: stakeholders, researchers, policy makers?
  - c. Who are the stakeholders, intermediaries, and networks, coalitions and which side of the policy are they on?
- iv. External influences
  - a. Who are main international actors, donors, their priorities, and constraints in the policy process?
  - b. What influence do the main international actors have on the adoption of the international fisheries instruments and policies?
  - c. What are their aid priorities of the international actors?
  - d. What are their research priorities and mechanisms of the international actors?
  - e. What are the policies of the donors funding the research?
  - f. To what degree can the existing academic evidence be realistically translated into policy advice and influence the implementation and adoption of the various fisheries instruments?
  - g. What are the existing policy-making processes?
  - h. What are the key influencing factors, and how do they relate to each other?
  - i. What is the nature of the evidence available to policy makers: Is it credible, practical and operationally useful?
  - j. Are other stakeholders involved in the policy area and which other actors can help to get the policy messages across to facilitate implementation?





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